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The Role of Mental Health Professionals in Cases of Child Sexual Abuse as Seen Through the Eyes of Judges

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THE ROLE OF MENTAL HEALTH PROFESSIONALS IN CASES OF CHILD SEXUAL ABUSE AS SEEN THROUGH THE EYES OF JUDGES

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ABSTRACT

The involvement of Mental Health Professionals (MHPs) in cases of child sexual abuse (CSA) is complex and intimidating. There are legal rules and academic suggestions to guide the MHP in this endeavor, but in experience, these rules and suggestions are lacking. Current literature and research indicates that there is little if any direct knowledge on how judges perceive MHPs who testify before them in court. A qualitative phenomenological inquiry that directly interviewed five judges about their perceptions of MHPs in cases of CSA was undertaken. The results indicate that MHPs should be more intentional about their choices regarding involvement in court, more proactive about educating the legal system regarding MHP involvement, more willing to advocate within the system for the best interest of the child, and more confident about the significance of MHP involvement in CSA cases.

DEDICATION

This dissertation is dedicated to my mother, Peggy Russell Etheridge, in honor of her passionate dedication toward the protection of children from abuse, and finally, her belief in me.

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INTRODUCTION

Introduction

As I began my career in counseling, I was, if not confident, at least reassured in the knowledge that my education and training would guide me in making the appropriate choices in situations that involved the abuse of a child. I graduated from law school, passed the bar, got a Master's Degree in Counseling Psychology, and successfully completed the licensure process for Licensed Professional Counselors (LPCs). I had the extra benefit of knowledge I had gained from my mother. My mother worked for more than forty years within the Mississippi Department of Human Services (MDHS), serving as the Director of Youth and Children Services in Claiborne, Jefferson, Copiah, Franklin, Adams, Lincoln and Wilkinson Counties at differing times. I grew up watching my mother fight against this form of maltreatment, and trusted my training and experience to help me when, or if, I was called into battle to protect a child against abuse.

Unfortunately, what I found was that I felt woefully underprepared. My ethical guidelines and learning led me to an awareness that my best course of action would be to refer the most complicated cases involving child abuse to other more experienced professionals. Therefore, when I found myself involved with a case in which there was a suspicion that two preverbal children were being abused, I reported the suspicion of abuse to MDHS, and referred the children to another mental health professional (MHP), who used the modality of Play Therapy in her work with children. I continued to work with one parent, however, and came to

the realization that no one really knew the best course of action. Numerous professionals reported the suspicion of abuse, but MDHS never opted to investigate.

I returned to The University of Mississippi to attend workshops for the purpose of learning about Play Therapy, with the idea that this knowledge would increase my effectiveness when working with situations involving child abuse. There I discovered that when MHPs are involved in cases of child abuse there are complications that make the experience a frightening one. At these workshops I heard stories from other MHPs similar to my own, in which MDHS had not investigated reports of suspected abuse. We all had varying degrees of frustration at the lack of response coupled with fear for our vulnerable clients, and ourselves. Then, if the case culminated in courtroom testimony, the fear and frustration reached a fevered pitch. This all too frequent situation, sadly, leads effective practitioners away from involvement in cases that involve the abuse of children.

I again returned to The University of Mississippi to work on my doctorate, expecting to design my dissertation around this topic. Initially, it appeared to me that the potential research lay with MDHS, in that there seemed to be some undefined reason that MDHS minimized reports that came from MHPs regarding suspected abuse. The legal aspect of my training initially led me to somehow investigate the phenomenon from a legal stand point, as there are laws which require MDHS to investigate reports of suspected abuse. I quickly realized however, that this would have a minimal effect, as the laws are already in effect, and the apparent problem is the inconsistent application of these laws. I then thought that investigating the responses of MDHS workers might lead to rich data related to the understanding of how MHPs should practice to increase the effectiveness of our working relationship with MDHS. At this point, however, I remembered my mother's experience.

During my mother's career, I often heard her discuss how individual judges expected different things from MDHS when cases of abuse were presented, and how this fact would alter the presentation of cases. This seemed to indicate that there is a defined system that exists between MDHS and the judiciary. It also might suggest that this system is in some way directed by judicial involvement. This led me to the decision to focus on judges. Judges logically seem to be the most direct entryway into understanding the system expectations of MHPs working to join the battle to protect a child from abuse.

As I increased my knowledge regarding qualitative research, the design for this study began to take shape. Even though I have been trained in many ways on how to handle cases of child abuse, my involvement always led to the development of more issues. My legal training directed me to explore the possibility of different approaches to this issue. However, none led to an answer that increased the effectiveness of my involvement in cases of CSA. Due to my experience within the Youth Court system, I remembered that I often felt a sense of disengagement between attorneys and MHPs. The attorneys often wanted and expected things from us that we are not professionally or ethically capable of giving, such as unconditional answers to the question of whether the child was abused, and by whom. Therefore it did not seem that reviewing how MHPs should testify would lead to any knowledge that is not already available, or increase my effectiveness when involved in such cases. I then thought of looking at other cases to see if there were consistent themes, but this approach also was unsatisfying, because each case of abuse is individualized, and would likely still leave unanswered questions. I then returned to the possibility that the best way to increase my understanding of this phenomenon might be to start with the decision maker, namely the judge. I began to realize that the judges represented the proverbial elephant in the room. Of all the players on the battlefield,

the judge represented the unknown. The substance of my own fear at involvement in court began to take shape. The next logical step was to work to understand a judge's experience of this phenomenon, and the most effective way to do this would be to interview judges. I therefore propose to conduct a phenomenological study into how judges perceive the role of MHPs involved in cases of CSA. I then worked to operationally define this phenomenon in such a way that interview questions could be created to lead to themes that increase awareness of the judicial perception of MHPs involved in cases of CSA. This could serve to improve MHP awareness of how to best handle cases of child abuse.

When I worked to construct some type of definition of these cases to move toward the development of interview questions, I realized that the area of child abuse is extremely complex. This makes the development of interview questions more difficult. To simply ask what experience the judge might have in cases of abuse is entirely too broad, and likely to bring answers that involve personal reactions to abuse. Therefore, it became necessary for me to try to put this phenomenon into some sort of framework to enable me to develop questions that would lead to answers that are more directly related to the stated purpose. I then thought of how I experienced involvement in cases of child abuse that led to my being called to testify in court. I began to realize that some of my natural fear of these situations came from my lack of certainty regarding what exactly a child's rights are in these cases. I am aware that they have the right to be safe from abuse, but, I was not sure of exactly where the lines between the child's right to safety and the parental right to direct the upbringing of that child are. Then the issue led to the nervousness that accompanies the MHPs uncertainty of what role they are expected to play in the courtroom. Then it would be necessary to understand what the system already has outlined as expectations for MHPs. The issue was still too broad. There are many different types of abuse,

many different levels of MHPs, and numerous differences between different State to State jurisdictions. One philosophy behind approaches taken by law professors is to teach the extreme situations in the hope that the student will then be able to be more effective in the more mundane situations that arise. I think that using extreme situations to approach this study will lead to more rich data in the same manner.

My experience has indicated that the complications involved in cases of child abuse are the most extreme in cases involving the sexual abuse of children, and for that reason, this study focused on cases of child sexual abuse (CSA). The application of utilizing the extremes in the design of the study does not so easily apply to the jurisdictional question, however. Working to determine the most extreme jurisdiction regarding the sexual abuse of children is a research question of its own, and for this reason I chose to limit my exploration to the State of Mississippi, partly for convenience, but also because my experience within this jurisdiction should help streamline my ability to understand the already existing approaches present therein.

In determining how to approach the issue of different levels of MHPs, the issue became more complex. I am both a Licensed Professional Counselor (LPC) and a Registered Play Therapist - Supervisor (RPT-S). I initially wanted to focus on Play Therapists as the MHPs in this study. However, it quickly became evident that the difficulties involved in designing a study that focused on the judicial perception of Play Therapists added a level of complication that might detract from the stated purpose; for instance, the difficulty of insuring that I could recruit enough participants, as each participant would be required to not only have experience with MHPs testifying in the courtroom but also MHPs who are Play Therapists. It also became evident that due to the many various labels of MHPs, and the fact that each can fulfill the roles

MHPs are called to fill in CSA cases, focusing on one type of MHP might limit the application of the data collected.

The question of whether or not the judicial perception is altered based on the type of MHP is an interesting question, and might be worthy of its own research, but is too broad for the scope of this study. However, one interview question was included that will explore the possibility of altered judicial perception based on category of MHPs. This question was based on Play Therapy as one of the newer forms of modality available for the treatment of abused children. A brief discussion of the abuse of children follows, which highlights the need for increased knowledge in this area.

Child Abuse

The abuse of children is an unconscionable act. Childhelp (n.d.) reports that approximately 5.8 million children were abused in 2007, and that five children die every day due to injuries received from abuse. Kesner, Bingham, and Kwon (2009) report that abuse is the second leading cause of death among American children. This intentional infliction of harm on some of the most defenseless members of society is, in our time, openly recognized as something to abhor. However, children are still a disenfranchised and marginalized segment of our population. Children's rights are narrow, and their voice is mostly ignored, unless verified by an outside source (Cousins & Milner, 2007). Even though society does recognize the need to protect children, as evidenced by the enactment of laws and funding of programs toward that end, when this need to protect collides with the child's inability to effectively describe abuse, the situation becomes extremely complex. When the rights of another who is not so marginalized are thrown into the mix, the complexities multiply exponentially. This perfect storm of

complexities creates an almost insurmountable obstacle for MHPs seeking to effectively advocate, treat, or participate in such cases.

Historically, children have, at times, been thought of as chattel, or property (Carmichael, 2006). This created a worldview in which the treatment of children was completely left to their parent or owner. Modern society has begun to recognize the necessity of occasional governmental intervention to protect children from abuse. Childhelp reports $104 billion in costs to protect children from abuse in 2007. However, as with any attempt to transform long held societal customs, complications remain. Those who most closely work with cases of child abuse clearly recognize that the individuality of human beings creates infinite possibilities of behavioral actions, and trying to define and pinpoint each one is impossible. Still, try we must, because the abuse of children is a behavior that society must work to eradicate as earnestly as possible.

Children suffer many types of abuse. One form of abuse is neglect which happens when a parent does not provide a child with the necessities to meet their basic needs, such as food, shelter, and clothing. Children can be physically abused by parents who hit and beat them, either through a misguided attempt to discipline or for some unspoken deeper psychological need. Children also can be sexually abused by strangers or even family members.

There are usually many people involved in protecting a child from abuse. Parents (assuming they are not perpetrators), teachers, school counselors, agency workers, police officers, physicians, attorneys, judges, and hopefully, a MHP who is, has, or will treat the child, can all play a role. For most of these people the roles are well defined. However, for the MHP there are many issues that complicate the matter. One complication is that the individual child's rights are not always clear. Another is the parent’s rights. How do those change when the parent

is the accused perpetrator? How does a MHP separate the role of clinician from that of advocate, expert witness, or forensic evaluator? Or should he or she? What exactly does the system expect from a MHP who is working outside this well-defined system when it comes to involvement at the court level?

The Research Problem

The problem is how do judges perceive the roles that MHPs fill in cases of CSA. To be able to understand this phenomenon more completely will increase the effectiveness of MHPs in cases of CSA. There is also the possibility that the data can be used to direct further research into this area.

Purpose Statement

The purpose of this phenomenological study was to increase knowledge about the judicial perception of the roles that MHPs play in cases of CSA. A review of the literature suggests that the issues of children's rights, parental rights, the role of the clinician in cases of CSA, and the expectations of the system influence this purpose.

Rationale and Significance

The rationale was to increase the awareness of MHPs of the perception that judges have of the roles that MHPs fill in cases of CSA, so that MHPs may best practice advocating for the benefit of the client. Working to understand the court's perspective of what is expected from MHPs involved in CSA cases will assist in improving our understanding of how MHPs should most effectively practice throughout a case of CSA. Increased awareness of how to most effectively act on behalf of an individual abused client will contribute to an increased effectiveness of advocating for marginalized children as a group, through increased recognition of areas of which the system may need to be made more aware. Therefore, the possible

significance of this study is that it clarifies the requirements for MHPs to undertake to best practice to protect children both individually and as a marginalized group.

> An independent assessment of the child's best interest is most necessary when children's needs do not overlap entirely with their parents' decisions. Children are put at the most severe risk when parents are unable or unwilling to give due consideration to their children's best interest when making decisions regarding their upbringing, but if courts refuse to acknowledge the possibility that those interest may diverge, children will be unable to challenge parental choices that could have devastating effects on their well-being and future. (Dodds, 2006, p. 728)

The questions that MHPs ask themselves when making choices of how to deal with an abused child will be simplified so that the MHP can focus more intently on the treatment of the child. The importance of the inclusion of MHPs within the already crowded battleground of a case of CSA will be made evident. The resistance that MHPs outside the well-defined MDHS/judicial system meet while trying to find a spot on the crowded landscape can lead to self-doubt and hesitancy on the part of the MHP. Hopefully, the end result of this study will give MHPs a basis on which to more readily justify their involvement in CSA cases by using the data to increase knowledge and decrease the anxiety often associated with MHP participation in a courtroom. A more clear process for MHPs to utilize when dealing with CSA cases became evident. Areas in need of further research were discovered.

Limitations and Delimitations

This study will be limited to the responses of judges within the State of Mississippi. Although this may limit the transferability of this study, the fact that each State has its own system regarding the procedure for handling CSA creates complications that can distract from

the main issue. Limiting this study to one State removes the need for exhaustive comparisons of State by State procedures which often detract from addressing the main issue of what actions a MHP should take by cluttering the information with minutia. The singular focus also serves to increase the study's usefulness. MHPs who practice outside this State can easily apply the results of this study by comparing and contrasting the requirements as determined by the Mississippi judges in this study against the known differences in legal standards within any other State.

In addressing this topic, the study delimitation was the choice to focus only on sexual abuse. This also limits confusion, as the number of factors that impact abuse cases can blur the lens and decrease clarity on how each case should be handled. I am taking the approach of focusing on one type of abuse so as to increase clarity regarding a potential operational outline of how to respond in cases of CSA. Perhaps another study could be undertaken to address issues that are unique to other types of abuse and/or custody issues.

Definitions

Some terms that will be used in this study are defined for the purpose of increasing clarity. As with qualitative inquiry, the study itself may lead to the emergence of themes or ideas that will then be defined. Even though many of these terms would be understood without formal definition, I wish to make clear how the terms are intended to be used within this study.

The Mississippi Department of Human Services web site uses the following definition of sexual abuse:

> any inappropriate touching by a friend, family member, anyone having on-going contact and/or a stranger such as:
>
> - touching a child’s genital area
> - any type of penetration of a child

- allowing a child to view or participate in pornography
- prostitution, selling your child for money, drugs, etc.
- forcing a child to perform oral sex acts
- masturbating in front of a child
- having sex in front of a child (Mississippi Department of Human Services, n.d.)

The Mississippi Code of 1972, sec. 43-21-105(n) defines sexual abuse in this manner:

> obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened. (Mississippi Code of 1972, 2010)

Additionally, the Office on Child Abuse and Neglect (DHHS), an agency within the US Department of Health and Human Services, defines sexual abuse as:

> inappropriate adolescent or adult sexual behavior with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism, sexual exploitation, or exposure to pornography. To be considered child abuse, these acts have to be committed by a person responsible for the care of a child (for example a baby-sitter, a parent, or a daycare provider) or related to the child. If a stranger commits these acts, it would be considered sexual assault and handled solely be the police and criminal courts. (DePanfilis & Salus, 2003)

The differing definitions of sexual abuse indicate that even the most basic aspect of CSA is not always clear. This paper will use the definition found within the Mississippi Code.

The field of mental health has grown through the years, which has led to many different professional designations. The practice of psychology is defined by the Mississippi Code, Section 73-31-3, as:

> Practice of psychology means the description, interpretation and modification of human behavior through the application of psychological principles and procedures. The practice of psychology includes, but is not limited to, the assessment of personal characteristics such as intelligence, personality, ability, and other cognitive, behavioral and neuropsychological functioning, and efforts to change or improve symptomatic, maladaptive behavior or mental health through psychotherapy procedures including psychoanalysis, behavior therapy, biofeedback and hypnosis. Psychologists diagnose and treat mental and emotional disorders, disorders of habit and conduct, and disorders associated with physical illness or injury. Psychological services are provided to individuals, families, groups and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered. (2010)

> Section 73-53-3 (Mississippi Code of 1972, 2010) defines the practice of social work as "the professional activity directed at enhancing, protecting or restoring people's capacity for social functioning, whether impaired by physical, environmental or emotional factors" and the practice of clinical social work as "the application of social work methods and values in diagnosis and treatment directed at enhancing , protecting or resorting people's capacity for social functioning, whether impaired by physical, environmental or emotional factors" (2010).

> A Licensed Professional Counselor, practicing counseling/psychotherapy, is described as a person
>
> rendering, offering to render or supervising those who render to individuals, groups, organizations, corporations, institutions, government agencies of the general public any service involving the applications of counseling procedures and other related areas of the behavioral sciences to help in learning how to solve problems or make decisions related to personal growth, marriage, family or other interpersonal or intrapersonal concerns. (Mississippi Code of 1972, sec. 73-30-3, 2010)

and continues to define counseling/psychotherapy as involving "diagnosis, assessment and treatment" (2010).

The Association for Play Therapy (APT) website (Association for Play Therapy, n.d.) defines play therapy as "the systematic use of a theoretical model to establish an interpersonal process wherein trained play therapists use the therapeutic powers of play to help clients prevent or resolve psychosocial difficulties and achieve optimal growth and development" (Association for Play Therapy). .

Inside Mississippi, an advocacy group for abused children, describes what this study means when referring to the Mississippi Department of Human Services (MDHS):

> Child Welfare Services are services made available to children whose parents are unable to appropriately care for their children. It provides protective services, foster care, adoption, and specialized services (psychological, physiological, and financial needs) to the children who are in their care. If there is a claim of an abuse or neglect, a social worker investigates the allegation. If the abuse is substantiated, the Youth Court Judge gives the custody to the State for protective custody. The child is then moved to foster

care where specialized services are given. The social worker advocates for the best interest of the child, be it termination of parental rights or reunification of the family. If reunification is accomplished the case is closed - if termination of parental rights is rendered, the child goes up for adoption. The social worker monitors the child until the age of 18 (Inside Mississippi, n.d.).

There are also different roles that a MHP can play in cases of CSA. These are advocate, clinician, expert witness, and forensic evaluator. An example of an advocate is a Guardian ad Litem (GAL). A GAL is usually appointed by the court, and the purpose of their involvement is to objectively determine the child's best interest. The GAL will interview all the people involved and review all the records of the case. This will lead to the development of an opinion on the best outcome for the child, having determined all the options open to that child. (Ceci & Hembrooke, 2002)

A clinician is usually called to court as a fact witness, sometimes called a lay witness. The clinician has a potential bias in favor of the child, because a bond has usually developed between the clinician and the child, due to the type of relationship. A fact witness will testify only to relevant, first-hand information regarding the case. It is often preferable to the clinician to be called as a fact witness, in that the therapeutic role is protected (Ceci & Hembrooke, 2002).

An expert witness is a witness who is called specifically to testify regarding a specific issue (Ceci & Hembrooke, 2002). This testimony is to serve the purpose of educating the court on a specific issue, of which the expert has specific knowledge. Sometimes an expert witness has access to the entire record of the case, but sometimes the expert sits in the courtroom and develops an opinion based on all the evidence that is admitted in the case. Occasionally, a clinician may be asked to fulfill both roles in one case. This is not ideal, as will be discussed in

the literature review, and can lead to a situation that creates confusion for the MHP, as well as for the court.

Forensic evaluation is a specialty within the area of MHPs. Forensic evaluators can be court appointed, but also can be privately retained. A forensic evaluator is someone who is trained in interviewing children without suggestion, and assessing the situation for the presence or absence of abuse. (Ceci & Hembrooke, 2002)

To define children's rights is another difficult task. No specific delineation of what a child's rights are was located, except within the United Nations Convention on the Rights of the Child, a treaty that the United States has not yet ratified. UNICEF states that

> human rights apply to all age groups; children have the same rights as adults. But children are particularly vulnerable and so they also have particular rights that recognize their special need for protection…It reflects a new vision of the child. Children are neither property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. (n.d.)

Even though UNICEF defines a child as anyone under the age of eighteen (n.d.), the State of Mississippi's statutory definition of the age of majority is twenty-one (Mississippi Code of 1972, 2010). However, there are numerous exceptions to the demarcation of twenty-one, including the right to enter into a contract, the right to sue or be sued, the right to serve as an executor or administrator of a will, and the right to enter into agreements related to real property (2010). The single specified right denied those between the apparently grey ages of eighteen and twenty-one, is the purchase of alcohol. This paper will refer to children as those under the age of eighteen.

Because of the many different nontraditional forms of families that exist in today's society, it might be appropriate to define what this study means by the term parent, because this can become a complicated issue as well. The child, whose rights are ill-defined, must depend on his or her parents for the execution of those rights. The term parent, in this paper, will be used to refer to whomever, individual or agency, stands in the position of the parent in relation to the child, whether through biology or legal process.

Working to then understand what a parent's rights are in relation to their children is also fraught with difficulty. There is no enacted parent's bill of rights, as such. There is a general recognition that parental rights are fundamental, and absolute, unless the parent has been deemed unfit. Our system of government takes a federalist stand on this issue, leaving this to the determination of each State. This is another factor adding to the complications that arise in cases of CSA.

Summary

The need to stop the abuse of children has thankfully become an accepted societal goal. This recognition has led to the development of laws and programs specifically geared toward that end. Those who are most closely involved in this fight carry a great responsibility, and need clear guidelines to protect and stop the sexual abuse of children. Even though some of the procedures and guidelines are clear for those on the front line, the battle plan is not always so clear to MHPs.

To increase the confidence and effectiveness of MHPs within these cases, this study worked toward increasing the awareness of the judicial perception of the role of MHPs involved in cases of CSA, based on what actual judges report they expect when MHPs are called to court.

This might allow MHPs to enter the fray boldly and become a more effective agent in advocating for the victims of CSA.

In conducting the literature review, no specific research was located that followed the pattern this project will take. The literature review will be premised on the issues of children's rights, parent's rights, balancing the different roles MHPs might be called to fill in cases of CSA, and the system's expectations of MHPs in cases of CSA. Each section will begin with established legal guidelines, if available. The sections will then be separated into literature written from a legal standpoint, and literature written from a mental health perspective, as my research indicates the two perspectives vary greatly.

Chapter Two

LITERATURE REVIEW

Introduction

This literature review includes literature from both a legal perspective and a mental health perspective. The purpose is to gain understanding of what a child's rights in cases of CSA are; what a parent's rights in cases of CSA are, and how those alter when the parent is the suspected perpetrator; what issues a MHP should consider when determining how to balance conflicting roles that can exist in CSA cases; and what the system expects from MHPs testifying in CSA cases. The review consists of a section for each issue. The sections begin with any system established guidelines, followed by the presentation of current literature from either the legal community or the mental health community, or both.

Children's Rights

No specific outline of children's rights was located, other than the United Nation's Convention on the Rights of the Child, put forth in 1989. This document is of great significance to the debate surrounding children's rights, but as the United States has not ratified this treaty, it is only referred to through the articles included. Because this project is limited to the State of Mississippi, a search of Mississippi statutes was undertaken, and none were found that specified any clearly delineated children's rights. There are statutes that discuss the procedures that should be utilized when addressing issues that involve children, but those are included in the section discussing system expectations. The articles on children's rights in this section are almost exclusively from the legal community, with a brief review of the manner in which various ethical

codes from the mental health community address the issue. The section will begin with articles that outline some basic philosophical beliefs regarding the rights of children.

Simon (2000) discussed one current approach to defining children's rights as addressed by the United Nations. The author points out the difficulties that exist within any discussion of how best to protect children, stating that the debate often gets derailed by attempts to define the rights of a child. The solution to this, as this article suggests, is to focus primarily on obligations and the duty to protect the child from harm. This leads to a philosophy that suggests that a child cannot enjoy rights until he or she is safe from harm. Therefore, if the moral obligation to protect children from harm is recognized, society must address the protection of children before the definition of a child's rights can be achieved.

The United Nations Convention on the Rights of the Child developed out of the atrocities suffered by two million Polish children during World War II. Simon (2000) states that in the history of the United Nations, this treaty was the most rapidly ratified by the highest number of member nations. Simon states "The Convention is not a catalogue of rights but rather a comprehensive list of obligations taken by states"(p. 5).

This approach is significant to a discussion of a child's rights in relation to CSA. As Simon indicates, the delineation of a child's right to be free from abuse does not impact the harm inflicted, and also detracts from the repugnant act itself. He compares this to the situation of murder, noting that the individual’s right not to be murdered has no impact on the moral injunction against murder itself (Simon 2000).

Reframing the issue of what a child's rights are into recognition that whatever rights a child has or does not have depends on his or her freedom from harm does simplify the issue. Simon (2000) mentions that one aspect of the Convention is that it begins to outline duties that

the ratifying States have towards the protection of the children within their borders. Many of the harms meant to be addressed by this convention are of a global nature, but the author includes child abuse within those harms against which the State should protect a child. This can serve as a foundation for approaching CSA cases for MHPs. Specifically, first, protect the child. A more specific description of children's rights in the United States can be found in Fetzer and Houlgate's 1997 article, entitled "Are Juveniles still 'Persons' under the United States Constitution."

At one time the United States Supreme Court seemed to be embarking on a path which would increase the recognition of children as persons recognized by the U.S. Constitution. This began with Justice Fortas who stated that "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate" (Fetzer & Houlgate, 1997, p. 325). However, beginning in 1984, this waned, to the point that this standard no longer seems to apply.

Fetzer and Houlgate (1997) indicate that discussions regarding the rights of children develop in two directions, namely the direction of a child's right to welfare rights or in the direction of liberty rights. Welfare rights include the right to be protected and benefits special to the class, and liberty rights refer to having the same rights as adults, and being able to act independently of a parent. This article focuses on liberty rights, which serves as a way to define the legal system's relationship with children.

The U.S. Supreme Court appears to put children in a special category. The Court recognizes that children have rights, but they place many restrictions on the exercise of these rights. Children do not have the right to be free from incarceration prior to trial based on the idea that the child might commit further harm to him or herself if not detained. A child's rights to free speech within a public school system are restricted to the point of nonexistence. A student

within a public school is not free from unreasonable search and seizure. An athlete at the same school is not free of drug testing even absent prior suspicion of illegal drug use (Fetzer & Houlgate, 1997).

Fetzer and Houlgate (1997) suggest a new approach to the issue of children's rights. They argue that the court is laboring under the misconception that a child either has full rights or exists in some specialized class requiring custodial protection. The authors suggest a continuum approach, referred to as enjoyment theory. The enjoyment theory approach would recognize that "children might possess the same rights now possessed by adults, while being justifiably denied complete enjoyment of some of these rights until a future time" (p. 335).

This leads to a three pronged approach to the theory of children's rights:

> (a) Children as persons have the same set of constitutional rights possessed by adults. (b) Primarily because children have not yet developed into autonomous beings as capable as the average adult of making free and informed choices, they may justifiably be restricted from the full enjoyment of some of their constitutional rights. However, (c) these restrictions are limited to those necessary to the child's development of future autonomy. (p. 336)

This approach clearly recognizes the obligation and duty to protect a child against harm that is outlined in the Simon (2000) article. The argument can be made that this balancing of a child's rights against the State's recognition of a need for the child to develop into future autonomy (should they accept this philosophy) could clearly impact cases of CSA.

In 2005, Mason addressed the history of the development of children's rights, or the lack thereof, in the United States. The article points out that while the United States was very involved in the development of the Convention on the Rights of the Child, only the United States

and Somalia have failed to ratify the treaty. The UNICEF website faq page points out that Somalia does not have a recognized government, and therefore cannot ratify treaties (UNICEF, 2008). So, in effect, the United States is the only country to fail to ratify the Convention on the Rights of the Child.

Although one of the reasons offered for this failure to ratify is that the United States already provides children with the rights delineated in the treaty, Mason (2005) disagrees. She discussed the impact that ratification had in other countries known for their advancement of human rights. In many of those countries ratification led to a reevaluation of the manner in which the ratifying country actually responded to children.

Mason (2005) then discussed how the United States' worldview of children developed. She points out that initially, children were certainly thought of as chattel, or property, but goes even further to point out that children were viewed as a parental asset, due to the parent's right to indenture the child, or have the child work within the family. This author suggests that the recognition of a child's rights has always been balanced against that of his or her parents. This creates a dichotomy in which rights granted to the child are seen as being denied to the parent. Time made it clear that children should have the right to be protected, and that sometimes the State must be the child's representative in pursuing this right, but there is still no recognition of a child's participatory/liberty rights.

> It is the modern, controversial concept of children's participatory rights, the right to express their views freely in accordance with their age and maturity, the right to be represented in all judicial and administrative proceedings, and the right to be considered as persons with interests apart from their parents that has not been fully realized or even fully recognized in the United States. (Mason, p. 959)

Mason (2005) recognizes that the American legal system's approach to children's rights is the most active in relation to juvenile criminal proceedings. The courts have recognized some participatory rights of children in these instances, granting children most of the due process rights guaranteed to adults. Notable exceptions include the right to a speedy trial, a right to bail, and a right to have their case heard by a jury of their peers. At the same time, courts have curtailed some of the historically accepted right to be protected, as evidenced by the increased push to try children as adults, as well as the application of capital punishment to children as young as fourteen.

Another area that poses an interesting point of reference for children's rights is in relation to a minor's involvement in decisions regarding medical procedures. There is a great division among states regarding a minor's consent to an abortion, but a general agreement on a minor's right to consent to treatment of addiction or sexually transmitted diseases (Mason, 2005). This indicates a continued lean toward the protective approach to determining the rights of children when attempting to weigh these against each other.

In the application of family law, Mason (2005) points out that even though the courts espouse the "best interests of the child" tenant, in reality the child's voice is rarely acknowledged in custody cases, when often the child is not even represented by counsel. "The voice of the child is often absent from proceedings that determine his or her home." (p. 961). This might indicate a continued reluctance to recognize that a child's rights can have equal weight with those of his or her parents.

Dodds, (2006) paints an even dimmer picture of the status of children's rights in America. "The United States is not doing a very good job protecting the rights to life, liberty, and the pursuit of happiness of this nation's children, who lack the capacity to defend their rights on their

own" (p. 719). The article follows a form of the "enjoyment theory" espoused by Fetzer & Houlgate, in that Dodds (2006) draws a comparison between abortion rights and children's rights, stating that it is a

> misguided premise that human lives only deserve constitutional rights once a set level of development is reached. True recognition of the civil rights of children will not meaningfully progress until America learns to value children at all stages of development. (p. 719)

Dodds (2006) discusses many areas that touch on children's rights, including abortion, a parent's right to direct their child's education, child abuse, and infanticide. In each area the conclusion reached is that the parent or State's rights take precedence to any consideration of the child's voice.

> The court did acknowledge the presence of a third party, [the child] but the role given to the child remained tangential, focused only on the child's right to influence the parent's decision, as opposed to a right to have his specific interests or desires considered as a separate constitutional matter. (p. 727)

Dodds (2006) explains that even in cases of infanticide the tendency is to treat these cases as something other than murder. It is acknowledged that these cases initiate great public outrage, but, by the time there is actual court involvement, the case is often not prosecuted, or the charge is something less than murder, or the sentence is probation. Some countries even statutorily mandate that infanticide of very young children be counted as manslaughter.

The subject of child maltreatment also was considered. In this area, the stance taken by Dodds (2006) is that the rights of the parents are still given more weight, and great care is taken

to ensure that the parent's due process rights are protected, while the child's rights to safety are, in effect, rendered nonexistent.

> If the state does nothing to protect a child it knows to be at risk, the child will have no remedy against the state. In short, the Court holds that the state does not owe anything to children; it might take action, but if it decides not to, the child has no recourse. And even when the state does intervene, court rules and limitations will often stifle the ability of the system to make a real difference; as courts will defer to parents' interests, rather than the child's right to be in a safe environment and loved and nurtured by a consistent and stable family. (p. 733)

There are some organizations working to change this.

Recently, a class action law suit was brought against the State of Mississippi by the class of abused and neglected children in Mississippi. The case alleges that "Mississippi's child welfare system has systematically failed to meet its legal obligation to protect and care for all of the State's abused and neglected children, all as a result of gross mismanagement and underfunding of Mississippi's overburdened child welfare system" (Olivia Y. ex rel. Johnson v. Barbour, 351 F. Supp 2d 543, S.D. MS, 2004, p. 547).

The plaintiffs alleged that there are two classes of children, those in the custody of MDHS, and those about whom reports of suspected abuse have been received. The legal basis for the claims is that the State was systematically denying the children their procedural due process rights, rights to equal protection under the law, substantive due process rights, and rights granted to them by the Adoption Assistance and Child Welfare Act of 1980 (AACWA).

The court dismissed most of the plaintiff's claims on the basis that none of the situations alleged resulted in a right that could be expected to be protected by the State. The court did

acknowledge the State's interest in protecting children, but the procedural due process claim was dismissed on the grounds that no specific outcome was guaranteed to children. This means that the process guaranteed to children is the process by which a report of abuse is made. The state has not guaranteed any specific outcome to abused children. The equal protection clause claims were dismissed because there was no proof that the State had acted with any intent toward denying the children their rights. Proving that a person's rights have been violated under the equal protection clause requires proof that the State intended to discriminate against the person or class of persons. There was no evidence of any intentional discrimination against the class of children specified in the case. The claims under the AACWA fell because the court held that the statute did not grant any specific actionable rights to the children.

However, in relation to the children already in the custody of the State, a different relationship was found. Once the State has taken custody of a child, a relationship of duty develops. The court made no comment on the quality of the claim, but found that this claim was viable, and was not dismissed.

In November 2007, a settlement was reached (Office of the Attorney General of the State of Mississippi, 2007), where MDHS agreed to become accredited by the Council on Accreditation; to increase the number of workers; to improve the hiring standards for and training of workers; to increase services offered to foster parents; to develop a 24-hour hotline for the reporting of suspected abuse; and to improve initial assessments of a child's needs when he or she enters the system.

A review of five codes of ethics from the mental health community was undertaken (American Counseling Association, 2005; American Mental Health Counselors Association, 2010; American Psychological Association, 2010; American School Counselors Association,

2010; Association for Play Therapy, 2009). The reason was to outline the mental health community's view of children's rights, in light of the previous discussion. The six organizational codes of ethics and/or guidelines for practice, promulgated by the American Psychological Association, the American Counseling Association, the American Mental Health Counselors Association, the American School Counselors Association, and the Association for Play Therapy are in line with the dichotomy of either a child's right to protection, or a child's right to participate.

The American Psychological Association Code of Ethics (2010) takes the approach that children are not a special class of people in need of particular attention, in that I did not note any specific mention of children at all. The implication would seem to be that children are to be treated as any other recipient of services. This is very much akin to the United States position that there is no need to ratify the United Nations Convention on the Rights of the Child. The implication here would be that a child's rights to the ethical receipt of psychological services are already covered in the ethics code as it exists.

Apparently, however, the organization does recognize the need for specific guidelines when psychological services are involved in the evaluation of child custody. The APA has authored a separate document regarding the ethical practices psychologists should follow when conducting evaluations for child custody (APA, 2009). The majority of the document is focused on the procedures that professionals should follow, with only the first three of the fourteen tenants specifically directed to the rights of the child. The document struggles with the idea that a child has rights, so that each of the first three tenants reiterates that the psychologist should use the best interests of the child standard in conducting these evaluations. "The purpose of the evaluation is to assist in determining the psychological best interests of the child" (APA, p. 5),

"The child's welfare is paramount" (APA, p. 6), but it even goes further to say "Psychologists seek to maintain an appropriate degree of respect for and understanding of parent's practical and personal concerns; however, psychologists are mindful that such considerations are ultimately secondary to the welfare of the child" (APA, p. 6).

The American Counseling Association (2005) takes one step closer to recognizing the participatory rights of children. They do acknowledge children, mentioning children specifically, but it is in relation to recognizing that children are incompetent to consent to treatment, and that the child's rights rest with the assumed altruistically motivated parent or guardian. There is reference to abuse and the necessity to follow applicable laws regarding the reporting of suspected abuse.

The American Mental Health Counselors Association (AMHCA) Code of Ethics (2010) goes a portion of a step further, by, at least arguably acknowledging that sometimes children's rights may run counter to their parent's rights. When discussing confidentiality, it is stated that while the parent or guardian has the right to the records, (in this code, children are specifically delineated, even though referred to as minors), the counselor "must take measures to safeguard client confidentiality within legal limits" (AMHCA, p. 2). Still, however, the parent's rights are specifically stated, and the implication is that counselors should tread lightly. "Mental health counselors embrace the diversity of the family system and the inherent rights and responsibilities parents/guardians have for the welfare of their children" (AMHCA, p. 5).

The ethical guidelines from the American School Counselors Association (2010) are more thorough regarding the importance of the recognition of the rights of children, but the document uses the term student instead of child, and also makes a point of recognizing the importance of balancing the rights of the students against the rights of the parents. Even though

the document does refer to the existence of divorce and separation, the code states that the school counselor should involve both parents, except when a court order prohibits disclosure. This document also encourages the counselor to take the student's development level and individual circumstances into consideration.

The Association for Play Therapy Best Practices document is on the other end of this spectrum, recognizing the child's rights as separate from but equal to, the rights of the parent or guardian. The Association for Play Therapy Best Practices (2009) states that the "play therapist recognizes and respects that the child is the primary client" (APT, p. 3). There is a particular section devoted to the recognition that the child may not have any say in entering the therapeutic relationship, but encourages the Play Therapist to take the child's wishes into consideration.

Parent's Rights

As the previous section shows, a child's rights are often thought to be some sort of function of a parent's rights, so, what then are a parent's rights? "The United States Constitution does not mention families, nor does it bestow any positive rights, such as a governmental obligation to provide health, food, education or an adequate standard of living" (Elrod, 2005, p. 167). The federal government seems to want to leave parent's rights to the decision of the States. There have been some federal statutes enacted to address the rights of children, parents, and families, but Elrod (2005) states that the federal judiciary continues to refuse jurisdiction when family rights are involved.

The Mississippi Code of 1972, sec. 93-13-1 has the following to say about parental guardianship of minor children:

> The father and mother are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education, and the care and

> management of their estates. The father and mother shall have equal powers and rights, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor, or any other matter affecting the minor. If either father or mother die or be incapable of acting, the guardianship devolves upon the surviving parent. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. But if any father or mother be unsuitable to discharge the duties of guardianship, then the court, or chancellor in vacation, may appoint some suitable person, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person. (2010)

There are also statues that delineate how parental rights can be terminated and some that relate to custody issues and some that relate to medical decisions, but not many that outline what should happen when children's rights and parental rights are in conflict. A discussion of some relevant court cases will outline a parent's rights. The United States Supreme Court recognized the fundamental right of a parent to make choices regarding the upbringing of their children in Meyer v. Nebraska (262 U.S. 390, 1923). The case involved a parent's rights to make educational choices impacting their children. This recognition of the existence of a right created a situation in which the State cannot infringe upon this right without adhering to the due process of law.

In the 1982 case of Santosky v. Kramer (455 U.S. 745, 1982), the Supreme Court recognized that the fundamental right of a parent could not be taken away without clear and

convincing evidence, as opposed to the lesser standard of a preponderance of the evidence. Justice Blackmun stated

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protection than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. (p. 753)

Washington State enacted a statute that gave any interested adult the right to sue for visitation rights with a child. In Troxel v. Granville, 530 U.S. 57, 2000, this statute was challenged. The court reaffirmed the fundamental right of a parent to direct a child's upbringing. The case involved two children whose deceased father's parents were seeking visitation rights. The children's mother did not object to visitation, but requested that it not be as often as the grandparent's requested. The trial court compromised, granting more visitation than the mother requested, but less than the grandparents sought. However, there was no finding of fault with the mother; no indication that the mother's judgment was flawed in any way. Therefore, the U.S. Supreme Court reversed the decision, stating that fundamental rights of parents could not be infringed upon without clear and convincing evidence of a problem with the parents' opinion. The trial judge made the decision on the basis of the fact that no evidence had been produced that would indicate that visitation with the grandparents would be harmful to the children. The Supreme Court, however, pointed out that this basically put the burden to establish that the visits

would be harmful to the children onto the parent, whose judgment had never been questioned. The Court held that the parent's opinion could not be superseded by the judge's just because the judge's opinion differed. The State would have to indicate in some way that the parent's judgment was somehow invalid.

All of these cases indicate that when a child's rights run counter to the parent's, the State will take the place of the parent. However, the parent's right to determine their child's destiny is a well recognized fundamental right, such that the termination of this right must not be taken lightly. The underlying belief in this approach is that parents can be trusted, unless proven unfit, to act in the best interests of their child.

Elrod (2005) briefly outlines the history of the recognition of family rights in the United States. The complexity of this issue is not only apparent when the child's rights might run counter to the parent's, but also when the parent's rights to the child run counter to each other. Today this situation is more frequent, with the increase of nontraditional families in America, such as same sex partnerships where children are involved, or when the child is conceived through the assistance of fertility treatments, such as artificial insemination or surrogate mothers.

Elrod (2005) states general parental rights as recognized by all States within the United States as follows:

> As a general rule biological or legal parents, including unwed fathers, have the fundamental right to the care, custody and control of their children free from state intervention. Parents are entitled to the physical possession of their children (and their earnings) and can make decisions about their residence, medical care, education, religion, and with whom the child associates. The state can intrude upon the parental relationship only with the parent's consent or through use of its parens patriae power to protect the

child, as in the case of abuse and neglect. To terminate a parent's rights to the child, the state must prove unfitness by clear and convincing evidence. (p. 169).

In this quote it is hard to deny the obvious relation to a child as property.

Our continued march toward progression has created situations in which the potential for violation of a child's rights can be undertaken by the very parent who is assumed to be worthy of the trust and responsibility bestowed thereby. Appel (2009) shines a light on a particularly tragic situation that can occur when parent's rights are construed to take precedence over that of the child.

The medical technology which has allowed life support systems to keep vegetative individuals alive for many years, has led to an extreme ethical issue, namely, what is a doctor to do when a parent refuses to deny care for a child that is on life support, and the reason for this denial is that the parent could be charged with murder if the child dies (Appel, 2009)? This situation is apropos here, in that cases in which a child has accused a parent of abuse create the same dynamic. The parent's rights will be infringed upon if the allegation of abuse is found to be true, so the accused parent has a vested interest in the child being proved a liar.

Appel (2009) suggested that the answer lies in the application of the best interests of the child doctrine. The author suggests that the doctrine always be applied in criminal acts where the parental decision making might be impacted by the crime. This suggestion was to be applied to cases whether the perpetrator was the parent or not, as the parent's ability to separate his or her own emotions from what is best for the child is unlikely in either case.

This was assumed to lead to a situation in which the court would take jurisdiction; however, courts will always seek the best interest of the child in cases that involve the welfare of children. The question becomes when can a State substitute its opinion of what is in the child's

best interest for what the parent thinks is in the child's best interest. This portion of literature review indicates that a child's rights, other than the right to safety, always lie with a third party, either the parent or the State. Therefore, unless the State chooses to actively involve itself in a case of CSA, the child has no recourse. It is hard to understand how the State can recognize a right, but leave the person entitled to that right with no recourse when the right is denied.

There are at least two legal constructs, parens patriae and in locus parentis, that address this issue (DeMitchell, 2002). This review indicates that the use of parens patriae is more referenced in discussions of the State's assuming the protection of children's rights, but perhaps in locus parenti should not be ignored. To compare and contrast, parens patriae indicates a more permanent substitution of the State for the parent, while in locus parenti could be instituted for situations in which the parental rights might be returned later; such as if the parent is found innocent of abuse, or when a parent's emotional response to crimes committed against their child render them unlikely to objectively consider the best interests of the child.

Professionals who work with children are often caught in this triangle of assessing the truth of allegations of abuse, and of protecting the child from possible danger, while not infringing on the parent's rights. The next section will discuss this issue more directly.

Clinician Roles

This brings us to the question of what role should MHPs play in relation to the child within CSA. The lines between the many roles that a MHP might fill can easily blur. On the one hand, the MHP might feel that pursuing a case of abuse could be harmful to the particular client, but at the same time feel the need to advocate against abuse. The MHP might be called in to determine the credibility of the disclosure, which requires a different mindset, as well as skill set, than that of a clinician working to assist the child in adjusting to life in the aftermath of abuse.

Sometimes the MHP is called in before any abuse is suspected, and then asked to become a forensic evaluator. Sometimes the MHP is called in after the initial disclosure has been made. Sometimes the MHP is called as an expert witness; sometimes as a fact witness.

At all times, however, even when court appointed, the MHP is safe in pursuing the best interests of the child, but how far does that actually go? Being aware that I am not omnipotent, I cannot with absolute certainty declare whether abuse has occurred, or who perpetrated it. I did not find any literature exactly addressing the balancing of the differing roles, but will include some that discuss the roles separately.

The traditional attitude that is taken by the mental health community regarding CSA is that it is an atrocity. At the same time, however, a public reluctance to discuss this issue is apparent, especially as it pertains to specific cases. Nelson (1998) takes direct issue with this approach. "The enforcement of silence has been and remains the most potent weapon of abusers, both individually and collectively. Breaking silence has likewise been seen as the crucial first step towards bringing about change and a safer environment" (p. 145).

Nelson (1998) recognizes the concept of confidentiality, but is referring here to administratively imposed silence. There are many reasons she recognizes for agency imposed silence. These include potential embarrassment at mishandled cases, the fear of being sued, and the fear of being misrepresented or manipulated. Nelson points out, however, that the refusal of professionals involved in cases of CSA to speak on the subject publicly is inconsistent with an attitude of disgust toward sexual abuse itself. "Skirting tactfully around real injustices against real people is itself a form of collusion in a silence that has to be broken" (p. 151). The MHP operates under an apparent double standard by encouraging our clients to speak out, but then being reticent to do so ourselves.

Nelson's (1998) position is related to situations in which those "forces aligned to combat child sexual abuse" (p. 145) have been brought into question. Her position is that if we are to be advocates for children, then we must assertively communicate our position, even in the face of disagreement. Maybe even, especially in the face of disagreement. She points out that when an agency's investigation of a particular situation has been called into question, the appropriate response is not to refuse to comment, but, instead, to explain. The author posits that MHPs should be courageous enough to acknowledge fault and increase the public's understanding of this complex issue as opposed to allowing the public to once again relegate the sexual abuse of children to the silence of secrecy. "It is possible to be outspoken in a courteous way and from the principle that the first duty is to protect vulnerable children" (p. 148).

A 1998 case study is particularly relevant here. This article is a good example of the expected role a forensic examiner should fulfill, as contrasted with the danger of becoming an advocate.

> Because of the strong emotions evoked by child sexual abuse and the polarization of views by some professionals involved in this area, litigated custody and visitation cases involving such accusations may lure the forensic evaluator from the role of a neutral scientist into the role of an advocate for the alleged victim, or for the accused. (Kuehnle, 1998, p. 2)

The case study examines a forensic evaluation conducted by Dr. Joseph Smith, a psychologist appointed as a forensic examiner. The parents had divorced when their daughter Amy was six months old. When Amy was five years old, her grandmother witnessed her attempting to assert a curling iron into her vagina. When asked, she reported to her grandmother that her father and step-brother put their fingers in her vagina. Amy's mother sought the advice

of a MHP, and was encouraged to file an emergency petition for a change in the custody and/or visitation of Amy with her father. The court appointed Dr. Smith to conduct the forensic evaluation (Kuehnle, 1998).

Dr. Smith's evaluation was fraught with issues, culminating in his contacting the father's attorney to file an emergency petition to remove custody from the mother and place it with the father. The most glaring issue within the case was that Dr. Smith never interviewed Amy's grandmother, who had reported the initial disclosure. His testimony in the courtroom showed a lack of understanding on his part of the developmental issues present in cases such as this one. He testified in an absolute manner that Amy's mother had coached Amy and that this coaching would certainly lead to irreparable harm. At no time did he offer the court any testimony of alternative explanations of the observed behavior, nor did he seem to be aware that there might be alternative explanations. He interviewed Amy in the presence of both parents, and used suggestive questioning techniques (Kuehnle, 1998).

This article underscores the importance of being properly trained if you are to enter the courtroom as an expert. Even though this article was related to a court appointed forensic evaluator, the same issues apply to any MHP called to testify as an expert witness. Often a MHP who is testifying in court is both an expert witness and a fact witness. This case also underscores the importance of keeping those lines clear.

In the case of Dr. Smith, it is clear that he became convinced that Amy's mom was coaching her to make accusations against her father. He then lost all objectivity, and clearly even lost sight of his court appointment. He was not working for the father, he was working for the judge, but instead of contacting the judge when he felt moved to request an emergency

hearing, he called the father's attorney. Dr. Smith stopped being a court appointed forensic evaluator, and became an advocate for father's rights.

This ineffective evaluation also points out the importance in being knowledgeable about CSA. The doctor in this case did not offer any evidence (other than his own opinion) that the mother in the case had coached Amy. He appeared unaware of the relevant behaviors for which to look to indicate coaching, not to mention the difficulty of coaching a child at Amy's particular developmental level. However, now that the child has been confused and subjected to suggestibility, it is likely that the truth will never be known with any certainty (Kuehnle, 1998).

In describing how an attorney should best utilize an expert witness, Steinhauser (2002) discusses the different types of witness, and issues that attorneys should consider when determining how to classify witnesses. The types of witnesses are defined. There is the expert witness, qualified as such under the applicable rules of evidence, who will be expected to offer opinions without any personal knowledge of the alleged event. Steinhauser lists ten aspects an attorney should consider when choosing an expert witness. They include education, practical experience, specialized training, teaching experience, number and level of publications, professional accolades, membership in professional organizations, depth of knowledge in the relevant literature, communicative ability, and prior classification as an expert. The strictly fact witness is to testify about personal knowledge that they have concerning the issue at hand. There is a third type, a combination of fact and expert witness, defined as a fact witness who can also be qualified as an expert.

Steinhauser (2002) discusses particular techniques that are effective, such as deciding whether the process of having a witness qualified as an expert is necessary. This might occur in situations when an ER doctor or social worker is to testify strictly to facts. The significance of

the introduction of this testimony is stated by the author as "the sad reality is that in child physical and sexual abuse cases, a child's future often depends on the testimony of experts" (p. 202).

Dent and Newton (1994) describe the differing approaches when a MHP is conducting a clinical versus an evidentiary interview. The article was written for the purpose of shedding light on the reality that there is no real evidence to indicate which form of interviewing is more effective. It is acknowledged that the purpose of the two interviews is different. This difference is attributed to the different goals inherent in each type of interview. The clinical interview is geared toward understanding what has happened to the child, with an eye toward developing a treatment plan, but the evidentiary interview is meant to uncover and develop information that will be admitted into a court of law. The clinical interview is more centered on the child, focusing only on what the child reports. The evidentiary interview includes at least some form of assessing the accuracy of what the child reports.

Dent and Newton (1994) refer to the system as it exists in England. There is a policy there of stopping everything once an allegation of abuse has been made, and involving the welfare or police immediately. Mississippi does mandate reports of suspected child abuse, but there is no recognized immediate response. Even following the lawsuit charging the State of Mississippi with negligently operating MDHS, the agency is still allowed a period of time in which to respond to allegations of abuse. Ethically we are bound to protect our clients, but again, if the State chooses not to respond, there is no recourse for the child. In jurisdictions where the practitioner is to immediately cease interaction with the child, bowing to the authorities who have both the authority and the resources to investigate the charge, the balancing act of what role a MHP should take becomes more obvious. There might be disagreements about

the effectiveness of this approach, but it does avoid the complication of deciding which role the MHP is to fill.

Bow, Quinnell, Zaroff, and Assemany (2002) researched what procedures were typically used by psychologists in conducting forensic evaluations in cases of CSA. A review of the particular procedures utilized is beyond the scope of this project, but a brief synopsis of the findings will underscore the significance of this issue. The authors note the absence of a specific guideline for professionals to follow. In addition, they found that research evaluating the effectiveness of these assessment tools is lacking.

The study surveyed psychologists who conduct CSA forensic evaluations. The majority of the respondents created their own protocol and did not use many assessment tools. The authors even pointed out that some of the reported assessment tools were administered incorrectly. This underscores the need for attention in this area. The legal community turns to MHPs with a childlike trust, believing that MHPs have some special magic that accurately assesses this incredibly complex issue, even though there is no evidence that the tools being used are any more or less indicative of the presence of abuse than not (Bow et al., 2002).

The article does clearly state, however, that a professional acting as a forensic evaluator should have no previous contact with the case. Bow et al., (2002) state that a forensic evaluator should be appointed by the court. A distinction is made between sole evaluators and team approaches. The sole evaluator may be preferred, but, if the evaluator lacks expertise in any particular area of the evaluation, that portion should be referred to someone who does have the requisite expertise.

These articles indicate that the safest approach to the question of how to weigh the different roles a MHP might be asked to assume in a case of CSA, is to separate them

completely, so as not to blur the lines between potential roles. This does seem academically wise, but there is no evidentiary basis for this approach leading either to more successful assessment of CSA, or increased effectiveness of the treatment of the child victim of CSA (Bow et al. (2002); Dent & Newton, 1994). There is also the issue, in a rural state like Mississippi, of the difficulty in locating two MHPs to participate in a CSA case. Some areas are lucky to have even one MHP, much less one who is an expert in the area of forensic evaluation. Then the question of how to balance these roles moves right back into the forefront. The MHP who works with victims of CSA would certainly not see any therapeutic benefit in refusing to continue to work with a child just because he or she happened to be the one to whom the child made a disclosure, particularly when that MHP is well aware that there will be no other MHP to forensically evaluate. The advocate who might use that same situation to highlight the plight of children victims of CSA in rural areas could hardly fail to see this approach as in the best interests of both children in general as well as individual children in cases of CSA. When a forensic evaluator chooses to locate in a rural area where there is little or no access to mental health, how could he or she deny the community the access that is so needed? This, though, puts the MHP squarely in the position of not being available to conduct a forensic evaluation, as he or she has already been involved as a clinician.

System Expectations

The previous sections make clear that in the American court system, a child's rights are a function of their parent's rights, and the child has no independent recourse when those rights have been violated. The rights of a parent are more or less absolute, outside clear and convincing evidence that the parents are unfit in some way, and that the only help for a MHP in these situations is to maintain clear boundaries between the many different roles that might need

to be filled in a case of CSA. An examination of what exactly is expected from MHPs when called into this system will finish this review.

There are many issues that arise at the courtroom door. The issues that a review of the literature indicates to be the most consistent are issues around the admissibility of the testimony offered by the MHP and issues around the reliability of the child's report. The issue of admissibility of MHP testimony arises through the argument that the evidence offered would not rise to the level of admissibility under the standards applied to scientific evidence. There are also issues surrounding admissibility that gather around the potential suggestibility of the techniques used, or the absence of any corroborating evidence. The manner in which to deal with the child's testimony is also an issue. If the child does not testify due to concerns for his mental health, then the evidentiary rules of hearsay become an issue on one hand, while the Sixth Amendment to the Constitution becomes an issue on the other.

The procedures promulgated by the Mississippi Department of Human Services (MDHS) will begin the discussion, and then some of the pertinent rules of evidence that come into play in CSA cases, then relevant case law, followed by articles that address the issues of the admissibility of mental health testimony, whether as expert or fact witness, and the issues surrounding the manner in which the court addresses the child's involvement in the case.

Beginning with procedural issues, the MDHS, on its website, states that:

> When a report is received, the report is screened by a supervisor to decide whether it should be investigated. If the report warrants an investigation, it is then assigned to a worker. First the worker will interview the child privately. Then every member of the household is seen and interviewed privately. At least one non-family member (teacher, doctor, etc.) who knows the child is interviewed. When the facts back up an abuse report,

> the Department will make a report to the district attorney within 72 hours. The district attorney determines whether criminal charges can be filed. (2009)

Mississippi Rules of Evidence (MRE) that are often at issue with cases of CSA, include MRE 803 which involves hearsay and the many exceptions thereto. At the federal level, the Supreme Court case of Crawford v. Washington (541 U.S. 36, 2004) discussed issues surrounding hearsay. Sometimes hearsay testimony can lead to the violation of the Sixth Amendment right of a defendant to confront witnesses against him or her. In cases of CSA many times the child victim is not made to testify due to the fact that the child may be further traumatized by the testimony. This is allowed under MRE 803(25), also known as the tender years doctrine. Admitting testimony under this exception to the rule against hearsay evidence can lead to Sixth Amendment issues. The tender years rule is an exception to hearsay in the MRE, defined as

> a statement made by a child of tender years describing any act of sexual contact performed with or on the child by another is admissible in evidence if: (a) the court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide substantial indicia of reliability; and (b) the child either (1) testifies at the proceedings; or (2) is unavailable as a witness: provided, that when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act. (p. 69).

The tender age of a child has been left to the discretion of the courts. A child under the age of twelve is presumed to be of a tender age, but a child over the age of fourteen also could be considered to be of a tender age depending on the specifics of the situation, such as the child's mental age. The Mississippi Supreme Court has stated a three pronged test for the use of this

rule in the case Foley v. State of Mississippi (914 So.2d 677, 2005). The test includes an initial finding that the child did disclose some sexual contact, the statement must include factors that indicate substantial indicia of reliability, and finally, that the child either testify at trial or be unavailable, and if unavailable, there must be corroborating evidence of the act before the testimony can be admitted at trial.

There are twelve factors to consider when determining the indicia of reliability, as set forth in the comment to MRE 803(25).

> (1) whether there is an apparent motive on declarant's part to lie; (2) the general character of the declarant; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; (5) the timing of the declarations; (6) the relationship between the declarant and the witness; (7) the possibility of the declarant's faulty recollection is remote; (8) certainty that the statements were made; (9) the credibility of the person testifying about the statements; (10) the age or maturity of the declarant; (11) whether suggestive techniques were used in eliciting the statement; and (12) whether the declarant's age, knowledge, and experience make it unlikely that the declarant fabricated. (p. 76)

The comment also states that the finding must be made by the court on the record.

Corroborating evidence can be more than eyewitness testimony or physical evidence, and can also include "confessions, doctors' reports, inappropriate conduct by the child, and other appropriate expert testimony" (MRE Comment to rule 803(25), p. 76). Often the testimony of MHPs comes into the courtroom through this exception to the hearsay rule, often offered as the corroboration requirement under MRE Rule 803(25). Then the issue can turn to the Sixth Amendment Right of the defendant to confront the witnesses against him or her.

The Mississippi court will then turn to standards set by the U.S. Supreme Court in Crawford (2004), which states that any evidence testimonial in nature must be cross-examined by the defendant before it can be admissible. Mississippi courts have held that testimonial in nature refers to any statements made by the declarant at the behest of someone for the purpose of gathering evidence to be used to help convict the defendant. Statements made to MHPs in clinical sessions with children and statements made to medical professionals who are working to treat the child by keeping him or her safe are not considered to be testimonial in nature. When parents engage various professionals in the course of the case, these professionals are not considered to be working to convict the defendant, but are considered to be working to treat the child. (Anthony v. Mississippi, Court of Appeals of the State of Miss, 2007; Bishop v. Mississippi, 982 So.2d, 371, MS 2008)

Turning to scientific evidence, the U.S. Supreme Court, in Daubert v. Merrell Dow Pharmaceuticals, Inc. (509 U.S. 579, 1993) recognized that the Federal Rules of Evidence were to determine whether or not scientific evidence could be admissible in a court of law. The case is the initial recognition that judges should be gatekeepers of expert/scientific testimony, requiring that the science involved be relevant and reliable. The Court felt that federal judges would be up to the task of determining whether the science in question meets the standard. In assessing this, the following factors are considered: 1) has the science been tested, 2) is this a theory that has been peer reviewed and published, 3) is there a known error rate, 4) if there are recognized standards in the practice, and 5) if the approach is generally accepted in the field in question (Daubert V. Merrell Dow, 1993). This case left some unanswered questions however, and soon the U.S. Supreme Court followed with Kumho Tire Company v. Carmichael (526 U.S.

137, 1999). In this case the Court tightened what had become a loophole, holding that testimony of a technical nature, involving specialized knowledge, also falls under the Daubert holding.

> In Mississippi, the MRE, specifically rule 702, addresses this issue. The rule states if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. (p. 56)

The rule was amended in 2003 to keep in step with the US Supreme Court holdings in Daubert and Kumho. This amounts to the judge being the determinant of whether the proposed scientific evidence is both relevant and reliable.

As the previous cases show, the application of the rules in CSA can be very complicated. The complications can be shown by the application of the rules in New York Family Court. The evaluation may deepen the understanding of system expectations, and highlight the conflict that often exists in CSA cases between justice and fairness.

Levine and Battistoni (1991) evaluated cases heard within the family court system in the state of New York to explore the application of rules of evidence when dealing with CSA. The article reported several issues that are common with cases of CSA, such as hearsay evidence, the use of the preponderance of evidence standard as it exists in family court, and the introduction of expert witness testimony.

Levine and Battistoni (1991) were aware of issues that created "frustration and distress" (p. 20) in attempting to address CSA. The difficulty of requiring corroborating evidence in

addition to the child's report was recognized. The legal implications of a finding of abuse within the family court system might not lead to criminal sanctions, but the impact can be just as significant. The authors felt that the greater discretion used by family court judges can increase the likelihood of false findings of child abuse, because the family court judges are not held to the more stringent requirements of a criminal court. Although there was recognition that the less stringent application was related to the need to protect children from abuse, the authors point out that the primary point of due process is for the system to guard against mistaken conviction.

The fact that courts had allowed expert testimony, but still required other evidence of the abuse as corroboration was discussed. There was an indication that the lack of consistently applied approaches within the mental health community in working with CSA should be more rigorously examined by family court judges in New York (Levine & Battistoni, 1991).

Hearsay testimony, often a serious issue in cases of CSA, also was discussed (Levine & Battistoni, 1991). Usually this appears as the child's statements being introduced into evidence through the testimony of another, often a MHP. There is most often a need for corroborating evidence in this situation as well. However, two cases were mentioned in which the court had determined that the hearsay evidence was sufficient to allow for a finding of abuse.

Levine and Battistoni (1991) discussed a psychologist's testimony that a child had been sexually abused by the father. The testimony was based entirely on things that took place during treatment sessions. No other evidence was offered, and the appeals court found that this was acceptable in this case, even though the higher court acknowledged the due process issue, because the quality of the expert's testimony was satisfactory.

Another case allowed for the corroboration to be achieved through the bootstrapping of two hearsay statements made to a police officer by two siblings. Bootstrapping refers to the use

of two separate statements to come to one conclusion, where neither statement would lead to that conclusion on its own. The judge in that case acknowledged that if the case had involved two separate statements by one child it would not have been sufficient, but because there were two independent statements by two children, the corroboration was satisfactory. The article also included a case in which a child's unsworn statements outside the courtroom were admitted. The statements were offered within the judge's chambers, in the presence of the attorneys involved in the case, but the child had not been given an oath (Levine & Battistoni, 1991).

The case of White v. Illinois (1992), 112 S. Ct. 736 was discussed by Kermani (1993). There have been changes regarding this issue since that time, but the findings are of historical significance, and offered here to further define the background of the formation of the issues that develop in cases of CSA. This case involved a child whose abuse was discovered by a babysitter, almost immediately following the incident. The babysitter became aware that the child was upset, and when asked, the child reported that a neighbor had touched her inappropriately. The child repeated the accusations, almost verbatim, to the mother, who called the police, and the child then repeated the accusation to the investigating officer.

When the case came before the Supreme Court of the United States, the main issue involved the defendant's Sixth Amendment right to confront the witness, as the child in this case did not testify. The court recognized the significance of the constitutional issue, but decided that the child's virtually identical repeated statements, so close in proximity to the event, created sufficient reliability to justify the introduction of the hearsay testimony without requiring the testimony of the child (Kermani, 1993).

Kermani (1993) suggested that this created a situation in which MHPs involved in cases of CSA should pay particular attention to the statements that the child makes. It would seem to

be important to recognize that the need for evidence corroborating the statement becomes more important the farther from the event the statement is made. The same situation occurs when the child has made differing statements to different individuals, which often occurs in cases of CSA.

Grove and Barden (1999) discuss the standard for admitting scientific expert testimony into evidence in courtrooms. The Duabert/Kumho standard is specified, as set out in several cases decided by the U.S. Supreme Court. In Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993), the court moved away from the previously established Frye standard, and held that judges should serve as gatekeepers responsible for excluding evidence that might be considered "junk science" (Grove & Barden, 1999). In examining a judge's admission of expert testimony, a court of appeals should "apply an abuse-of-discretion standard" (p. 225) as decided in General Electric Co. v. Joiner (522 U.S. 136, 1997). Closing out the cases, is Kumho Tire Co., Ltd., et al. v. Carmichael et al. (1999), which did away with a distinction between expert scientific evidence and evidence that might be skill based or technical in nature.

Grove and Barden (1999) listed six questions that should be asked by a court when considering the admissibility of expert witness testimony.

1. Is the proposed theory, on which the testimony is to be based, testable (falsified)?
2. Has the proposed theory been tested using valid and reliable procedures and with positive results?
3. Has the theory been subjected to peer review?
4. What is the known or potential error rate of the scientific theory or technique?
5. What standards, controlling the techniques; operation, maximize its validity?
6. Has the theory been generally accepted as valid in the relevant scientific community? (p. 226)

The authors added another consideration, "Do the expert's conclusions reasonably follow from applying the theory to the case?" (p. 226). The application of these questions was then applied to the possible admissibility of evidence related to a Rorschach test, and the possible admissibility of a diagnosis of either Post Traumatic Stress Disorder (PTSD), or Dissociative Identity Disorder (DID). The authors concluded that the admissibility of evidence in any of these situations, if the Duabert/Kumho standard was rigorously applied, would be doubtful.

Grove and Barden (1999) went so far as to state that they would consider it unethical for a MHP to offer testimony that would not meet the Daubert/Kumho standard. There was discussion of the controversy that sometimes accompanies Rorschach testing which led to the determination that this testimony should not be admitted. The authors also suggested that if the Rorschach, which has been extensively tested, failed to meet the Daubert/Kumho standard, any other projective technique would likely meet the same fate.

The use of the DSM as evidence that a particular disorder actually exists was also on the author's list of evidence that should not be admitted under a stringent application of Daubert/Kumho. The reasons behind the development of the DSM, as well as the disclaimers that they are merely a catalogue to help MHPs communicate more effectively when discussing symptoms was used to reach this conclusion (Grove & Barden, 1999).

Murrie, Martindale, and Epstein (2009) continue in the same vein. Although this article did apply the Duabert/Kumho standard, the application of twelve standards developed by Melton, Petrila, Poythress, and Slobogin (as cited in Murrie, Martindale, & Epstein, 2009) were applied as well. These factors were developed as a guideline to be used by forensic evaluators when choosing assessment techniques. The twelve factors are as follows

1. What is the construct to be assessed?
2. How directly does the instrument assess the construct of interest?
3. Are there alternative methods that assess the construct of interest in more direct ways?
4. Does the use of this instrument require an unacceptable degree of inference between the construct it assesses and the relevant psychological issues?
5. Is the instrument commercially published?
6. Is a comprehensive user's manual available?
7. Have adequate levels of reliability been established?
8. Have adequate levels of validity been demonstrated?
9. Is the instrument valid for the purpose for which it will be used?
10. What are the qualifications necessary to use the instrument?
11. Has the instrument been subject to peer review?
12. Does the instrument include measures of response style? (p. 398)

Murrie et al. (2009) noted that even though most projective techniques failed to meet the above standards, many projective techniques were used when assessing cases of CSA. They specifically discussed the use of sand tray and sand play techniques, along with projective drawings. The use of sand tray and sand play techniques was found to be ambiguous, and neither empirically supported in general use, nor in specific use when assessing CSA.

The use of projective drawings was also found lacking, although it was recognized as a popular technique. The reasons given were that the use of projective drawing is based only on theory, and had none of the necessary normative qualities of a standardized test, and little data was available regarding the validity of these techniques.

Another issue of concern in cases of CSA is the suggestibility of children as witnesses, as addressed by Rosenthal (2002). Rosenthal states the importance of this issue.

> When accusations are not freely or spontaneously disclosed by a child, it is crucial to know the methods by which they were produced. This is because, as the scientific research shows, certain methods of questioning have the power to compromise the accuracy of children's reports and even cause children to report having experienced events that never occurred. (p. 338)

Interview characteristics that indicate suggestibility were given. These included interviewer bias, interviews conducted by adults with high status, the repetition of questions, misleading questions, repeated interviews, peer pressure, stereotype induction, the use of forced-choice answer questions, and the use of rewards or punishment (Rosenthal, 2002). The presence of bias on the part of the interviewer is particularly prominent, as this will usually result in the use of some of the other techniques listed; such as asking the same question until the expected answer is given, inducing the stereotype of the alleged perpetrator as a bad person, the use of questions that are not open ended which direct the child to the desired answer, as well as the use or threatened use of punishment if the child does not tell the truth.

Rosenthal (2002) discusses the Sixth Amendment Constitutional rights afforded the defendant in a criminal case of CSA. His position is that the unreliable aspect of a child's statement, once subjected to suggestive interviewing, makes it inadmissible as evidence. The arguments that should be made to exclude the evidence, and ways to establish the suggestibility of the interview are outlined. Rosenthal makes a point to recognize that adults of high status i.e., police officers and MHPs, who use these techniques often think they are being helpful, so notes of the interview will probably include the suggestible questions used. The author makes an

important point, however, in that the legal system is expected to be above the passions released by a particular issue, and that the people who are most in favor of admitting evidence tainted by suggestibility are the prosecutors. Rosenthal (2002) ends by stating

> But our judicial system is based on the Constitution and is designed to apply the law with an even hand, providing an assurance of fundamental fairness, equal protection, and due process to every defendant, regardless of the particular passions or prejudices of any given moment. Just as the law does not permit children who have been victimized to be ignored, it does not allow unequal access to constitutional protections. (p. 369)

Schreiber (2000) conducted a study concerning the suggestibility factor within allegations of abuse within a day care center. Suggestibility within suspected cases of CSA within day care centers is particularly problematic. The children are often interviewed repeatedly, by many different adults, some of whom are not trained in dealing with these cases, and the issue of peer pressure is more evident due to the number of children involved. Very often in these cases the children's testimony is the only evidence, which leads to a possible situation of bootstrapping hearsay as corroboration.

The case Schreiber (2000) used involved Kelly Michaels. She was a day care worker at a day care center in New Jersey. She left the day care for a better paying job, and then one boy, while having his temperature taken rectally, mentioned to the pediatrician that "that's what my teacher does to me at school" (p. 197). The case developed from this point, ending in Kelly Michaels being charged with 163 counts of sexually abusing a child. She was found guilty on 115 charges. After five years in jail, her conviction was dismissed, and she was released. The appellate court held that "the prosecution must show that despite suggestive interviewing techniques; the children's testimonies were still sufficiently reliable" (p. 197).

Schreiber (2000) compared twenty transcribed interviews in the Kelly Michaels case, and twenty transcribed interviews taken by DHS workers in New Mexico involving single incident cases of suspected CSA. The findings were that almost all interviews, whether in day care cases or single incident cases, used more yes/no questions than research indicates as appropriate. The significant differences between the interviews were related to interviewing techniques used. These included multiple interviews, more use of allowing the interviewee to know what other children had said, and multiple interviewers present within one interview.

This study is an important one relating to the necessity of having trained interviewers involved in cases of CSA. This case is a good example of how convoluted such cases can become. The inclusion of the suggestive interviews with this population of children so taints their statements, that the truth of this alleged situation can only be known by Kelly Michaels. The importance of educating those who will inevitably become involved in cases of CSA becomes evident.

Piper (2008) also addresses attorneys that work with cases of CSA. The author outlines several issues that are particularly prevalent in these cases, and that should be thoroughly understood by attorneys. These include the difficulty in defining sexual abuse, the question of validity and reliability of clinical judgments regarding CSA, factors that influence clinical judgment, the lack of "valid, generally accepted profiles of the child victim or of the perpetrator" (p. 278), issues surrounding the disclosure of abuse, and the use of projective techniques to assess CSA. There is also a discussion of issues surrounding the medical exam, but these are not relevant here.

The forensic interview is discussed. Piper (2008) suggests two to three interviews, although admits that sometimes more are necessary. The dangers of repeated interviews as to the

suggestibility issue are pointed out. There is also the inclusion of the danger involved when parents continually interrogate the child. The suggestion that the interview take place as soon as possible following a child's disclosure, as well as the importance of being aware of potential interviewer bias was made. It also was suggested that structured protocols be utilized.

Piper (2008) also made suggestions on evaluating the veracity of the statements of children regarding CSA. These included the presence of multiple encounters between the child and the abuser, whether the allegation was made by a parent or the child directly, the inclusion in the disclosure that the alleged perpetrator requested that the abuse remain a secret, the use of manipulation to maintain secrecy, consistency in the details, and idiosyncratic details that are unique to the child's experience.

Another important person to consider within the courtroom is the judge. Connolly, Price, and Gordon (2009) conducted a qualitative study, with a grounded theory approach, to study judicial reactions to CSA in Canada. The study focused on 87 cases referred to as historical child sexual abuse (HCSA) defined as reports of abuse that had occurred more than two years prior to disclosure.

The application of a coding system developed four themes that were present in the decisions. These were judicial comments related to the memory of the event, the reliability of the evidence, the credibility of the complainant, and judicial inferences which were judicial comments made for which there was no direct evidence (Connolly et al., 2009). Issues of note within each theme also were described.

The memory of the event included comments regarding the specific details remembered, the general details remembered, and failures of memory. The reliability theme included comments regarding inconsistent statements, presence or absence of corroboration and the

quality of the evidence. The credibility theme included comments related to the behavior of the complainant in relation to or in close proximity to the alleged abuse, their behavior regarding the disclosure, and the behavior exhibited at trial. The theme of credibility resulted in the development of both properties and dimensions. In relation to the actual incident, the judges made comments regarding the behavior of the complainant after the incident, and also the level of resistance displayed by the complainant. In regards to the disclosure, there were comments related to the reason for the delay in disclosure, possibility for collusion related to the disclosure, any motive to fabricate, reports of others regarding the complainant's behavior at the time of the alleged abuse, and any reasons that initiated a present need for disclosure (Connolly et al., 2009).

The results indicated that the judges were more aware of the issues within cases of CSA than the researchers expected. "For the most part, factors that influence verdicts in HCSA criminal cases are supportable with empirical research and consistent with high court rulings" (Connolly et al., p. 119). The most frequent comments were related to issues of memory, followed by credibility. Almost each case had at least one judicial inference, but these were not overly significant.

One concern, however, was that the judges showed pronounced interest in the behavior of the child at or near the time of the alleged event. The authors point out that there is no scientific evidence that there is any significant probative value to this behavior. Connolly et al. (2009) noted that there was no significant relationship between these comments and case outcome, but still were concerned that the comments were made at all. The suggestion was made that evidence related to the complainant's behavior at the time of the abuse not be admitted into evidence at trial.

In a case study that involved the introduction of videotaped sessions of Play Therapy, Snow, Helm, and Martin (2004) discussed the introduction of this evidence in a court case involving a three year old child who had experienced physical abuse at the hands of his mother and her boyfriend. The authors outlined four purposes for the testimony of the Play Therapist:

> to establish a therapeutic relationship between the therapist and Jamie, which allows for testimony concerning the psychological trauma experienced by Jamie; to verify the occurrence of further trauma should Jamie have to testify; to clarify the purpose of play therapy; and to describe the videotape and interpret the meaning of the play themes. (p. 80)

The introduction of the videotape served the purpose of showing the child to the jury, and allowing the jury to see the extent of the child's fear, as well as to let the jury get a sense of the child's vulnerability.

The case did have corroborating evidence. There were graphic pictures of the injuries the child suffered, and comments to others before he entered the therapeutic relationship with the Play Therapist, but Snow et al. (2004) suggested that the impact of the videotaped session could not be overstated. This allowed the jurors to see that the child was still suffering and vulnerable more than five months after the attack. The accused perpetrators were found guilty and sentenced to the maximum sentence of twenty years without the possibility of parole.

The tender age of this child underscores the need for some level of child advocacy. He would not only have been further traumatized by the experience of testifying, but would very likely have been unable to effectively report on the abuse that he suffered. This made the evidence of the videotape even more significant, as it was not emotionless or removed from the actual event, and shows those who work in this field the importance of bringing the child's

experience into the courtroom (Snow et al., 2004). One of the most fundamental rights that Americans have is the right to equal protection under the law. This case study highlights the need for clarification of how exactly to protect the rights of a child who can neither appreciate the right nor advocate for its application in his or her case.

Two articles that described the legal system's procedures in other countries are offered to compare and contrast with the system as it is applied within the United States. Myklebust and Bjorklund (2009) endeavored to compare field investigative interviews with children in CSA cases with the case outcome. The study took place in Norway, where the rules do not require a child to testify in cases of CSA. In such cases what is referred to as a field interview can be the most important evidence. All field interviews are videotaped and presented to the court.

Myklebust and Bjorklund (2009) took one hundred interviews and used a scoring system that counted the number of words the child used to reply to the interview questions. This was the dependent variable, with case outcome and gender as independent variables. There were three levels of the independent variable of possible outcomes in the case, conviction, acquittal, or insufficient to proceed. ANOVA and Chi Square were the primary statistical tests run, with post hoc on the ANOVA.

The study found a significant relationship between the number of words used by the child and conviction. There was an even more dramatic relationship between “old girls” (defined by the study as over girls over the age of ten) and conviction. In the population of girls over ten there were no acquittals. This population also had the highest mean number of words used in response during the field interview. As this was an unexpected finding, the authors encouraged further research on this possible issue (Myklebust & Bjorklund, 2009).

The article describes Norway's system such that it becomes clear that the child is uniformly protected from testifying in court. The field interview is standardized and administered by professionals specifically trained in performing the interview. Introduction of the videotaped interviews is par for the course, and the need for corroboration is not as pronounced. This approach would simplify some of the complexities that exist within our own system. Corroborating evidence is always an issue in our cases, allowing the child not to testify can rise to the level of a Constitutional issue, and there is no accepted standard interview used in all cases of CSA. The issue of hearsay is also minimized in Norway's system.

In the United Kingdom, Ryan and Wilson (1995) describe the rules of evidence related to CSA cases in the United Kingdom. There were three issues unique to the UK discussed by the authors who then argued that Nondirective Child Centered Play Therapy (NCCPT) was an excellent fit for therapists to use when working with a child whose case might end up in court.

The article addresses changes that had taken place within statutes in the UK regarding the prosecution of CSA. One change involved recognition that there was a need to protect a child's rights, or at least to be sure the child's wishes within specific situations were known. This led to the court turning to MHPs to determine what those wishes might be. There was also recognition of the danger of suggestibility in interviews conducted when investigating CSA, which led to the development of guidelines to be used in such situations. At the same time, the rules regarding the introduction of a child's testimony at trial had become more flexible (Ryan & Wilson, 1995).

One issue that developed in the UK that is not apparent in our system, is the court's resistance to having children who are alleged victims of CSA in therapy before the case goes to trial. Although Ryan and Wilson (1995) point out that there is no law against a child receiving

therapy before court, it is frowned upon. This approach is taken due to the desire to protect the child's statements from possible effects of suggestibility.

The qualitative methodology that will be used to examine the judicial perception of MHPs who are called to testify in court will now be outlined. In conducting interviews with judges specifically regarding the manner in which they interpret and implement procedures within cases of CSA, I hope to add some clarity to the many complex issues involved

Chapter Three

METHODOLOGY

Research Design

The research design for this study was qualitative. The methodology was phenomenological. The most adept way to attempt to increase knowledge that will lead to more effective MHP involvement in cases of CSA is to interview those most directly involved in the application of the rules that exist within the social construct of a courtroom, specifically, judges.

My goal was to work to "reduce the textural and structural meanings of experiences" (Creswell, 2007, p. 234) of judges within CSA cases in such a way as to increase the understanding of MHPs of the crucial aspects of these cases that are central to the judicial experience. An understanding of the judicial perception of MHPs involved in CSA cases will allow MHPs to more effectively understand how to better represent their clients within cases of CSA.

I used interviews with willing participants. The interviews were recorded and transcribed. I kept a field journal to record immediate reactions to the interview, as well as a separate reflective journal to record and maintain any reactions or observations I made during the data analysis. The reason for the two journals was to create a procedure that gave me an opportunity to recognize any of my own biases that become evident in this study I think that my awareness of the increased emotional charge that accompanies CSA created a need for an internal check in order to minimize the effect of possible emotional reaction on the data analysis.

The transcriptions, field journal, and reflective journal were coded on an ongoing basis for indexing purposes.

Participants

The population for this study was judges within the State of Mississippi who have some jurisdictional involvement with CSA, and experience with MHPs in the courtroom. This could include Chancery Judges and County/Youth Court Judges, and/or Youth Court Referees. There are twenty Chancery Court districts within Mississippi, with forty-nine Chancery Court Judges throughout the state. There are eighty-two counties within Mississippi, and each county will have either a County Judge or a Chancery Judge who will serve as a Youth Court Judge. It is also possible that there is an appointed Youth Court Referee. Mississippi has one municipal Youth Court Judge in Pearl, MS (State of Mississippi Judiciary, n.d.). The participants were chosen from this population.

The method used to recruit participants was purposeful, using a networking approach. "The idea behind qualitative research is to purposefully select participants or sites…that will best help the researcher understand the problem and the research question" (Creswell, 2009, p. 178). My experience with cases of child abuse, as well as my contact with other professionals who have experience with CSA and courtrooms led me to possible participants. I contacted those professionals to help me develop a list of judges that were most likely to help me understand the judicial perception of MHPs involved in CSA cases. I chose four to eight judges to interview. I then personally contacted these judges for the purposes of recruitment into the study (see Appendix A for recruiting email). This number is in keeping with other studies that have been conducted using this methodology, and is also suggested by Creswell (2007). I planned to choose at least one, possibly two, judges to serve as key informants (Patton, 2002); in that the

interview protocol would be used with the key informants to verify that the interview questions were effectively written. I intended one key informant to be a judge with whom I was already familiar, and the other was left open to the possibility that the MHPs that provided me with suggestions of judges to interview might suggest one as particularly likely to provide me with rich data. Further discussion of the use of the key informant in this study is given in Chapter four.

Main Research Question

What is the perception of judges in Mississippi regarding the roles of MHPs in CSA cases? The complexities that come into play with CSA make this a much more complicated question than it might initially appear.

One of the things that becomes apparent when doing any study on the literature that exists regarding this issue, is the innumerable side issues that develop. There are articles that address being an expert witness (Grove & Barden, 1999; Steinhauser, 2002), some addressing types of assessment that should be used for court (Murrie, Martindale, & Epstein, 2009; Schreiber, 2000), some dealing with the clinical issues related to court involvement (Gil, 2002; Kermani, 1993), and one addressing the use of videotaped sessions (Snow, Helm, & Martin, 2004), but all seem to focus only on one aspect of a CSA case, which can leave questions regarding other aspects of a CSA case unanswered. It is too ambitious to expect to leave no questions unanswered, but the daunting task of being able to increase the awareness of expectations within a case of CSA for MHPs that begins with the initial referral and ultimately, ideally, ends with the protection of the child is appealing. This is the reason for having only a single research question, as it is significant enough. The qualitative approach taken will possibly

lead to other issues, and I will keep an open mind to the potential inclusion of these as research questions.

Researcher Lens

One aspect common to all qualitative research is that the research cannot be separated from the researcher (Creswell, 2009; Lincoln & Guba, 1985; Patton, 2002). Creswell (2009) states that the researcher's "interpretations cannot be separated from their own backgrounds, history, contexts, and prior understandings" (p. 176). This creates the necessity that the researcher continually be aware of his or her own experiences and how these may influence the interpretation of the data collected. For this reason, a biographical background was included in Chapter one to clearly delineate the researcher's lens in this study.

Words are not strong enough to convey the importance of protecting children from any type of abuse. Being an advocate for a cause often evinces the notion that the advocate is somehow radically invested in the cause, which can detract from the advocacy. At the same time, it is difficult to imagine a situation in which any one would not agree that protecting children from abuse is morally significant. I report this because I want to disclose any possible bias. I took the attitude of objective observer during the interviews, and recorded any reactions that I had in relation to my bias against child abuse in my field journal, if it happened during an interview, and my reflective journal if it appeared during the transcription or data analysis, and used the two journals as a check against each other to reveal bias of which I was not aware.

Maintaining Confidentiality

The interviews were audio taped, but once the tapes were transcribed there was no identifying information associated with the transcripts. Code names for the participants were developed, and this list will continue to be kept in a separate location from the transcripts. The

code names were randomly developed. Because it might be possible to identify a participating judge based on some of the information within the interview, the transcripts were kept in a locked cabinet, within a secure room, and all efforts were taken to maintain the integrity and security of the transcripts. The recordings were deleted once they were transcribed and I proofread the transcripts for accuracy. Field notes were taken by the researcher, both during the interview and immediately following. These referred to the participants only by code name, and contained any reactions that the researcher had to the interview and/or the interviewee. A reflective journal was maintained, which included reflections and reactions to the transcribed interviews, any developing themes, and any thoughts or emotions that might reflect possible bias on my part. The field notes and reflective journal only referred to participants by code name, but was also maintained in a secure and confidential manner. The participants were informed of any risks that they might experience as a participant in this study. The participants were informed of the scope of the study, and the intended use of the results, including their comments. No quotes were attributed to any participant directly.

Several procedures suggested by Creswell (2009), and Creswell and Miller (2000), were undertaken to build credibility and trustworthiness. Constant comparison of the coding, as represented by memos of the definitions of themes, was maintained within the reflective journal. An audit trail was created by the reflective journal. A member check in which the judges were given a chance to comment on summaries of the field journal entries regarding their interviews was conducted. The use of thick description was used to ensure that the reader fully appreciates the process, and can judge the applicability of the data to other jurisdictions. All recognized researcher bias was disclosed, and an external auditor was consulted to endeavor to uncover any hidden bias. Any outlying data developed was presented in full.

Interview Protocol

The interview protocol was developed following Creswell's (2007) format. The time and place of the interview was documented, along with a description of the particular judge's position, such as Circuit Court Judge, County/Youth Court Judge, or Chancellor. I initiated the interview by introducing myself, and providing enough personal background to make the judge aware of the aspects of my personal story that were relevant to this project, such as my education and professional experience. I explained the taping procedure, and the steps that were taken to insure confidentiality. I explained to the judge that The University of Mississippi Institutional Review Board approved the study, and how the judge might contact the IRB if desired (see Appendix B for consent form). Following these remarks, I asked the judge if he or she had any questions or comments. I then explained the purpose for the research, and asked for any initial comments that the judge might like to make, and if there were any questions before we began the interview.

The interview questions were open-ended. Follow-up questions were based on interviewee comments that were unclear or incomplete. I asked a final question specifically about the interviewee's perception of Play Therapy as a means to begin to develop further research.

The initial question was geared toward the judge's perception of the role MHPs play in cases of CSA. Several additional questions were asked to gather more specific information regarding the participant's understanding of the rights of the child and parent, and a final question specifically regarding the participant's awareness and perception of Play Therapists as MHPs. I included suggested follow up questions, but these were also based on the judge's initial response.

The interview questions were as follows:

Question one: What do you think the roles of MHPs in cases of CSA are?

Follow up to Question one:

How should MHPs balance the role between clinician and witness?

Question two: What is the role of the MHP regarding children's rights in cases of CSA?

Follow up to Question two:

How would you describe a child's rights in cases of CSA?

Question three: What is the role of the MHP regarding parental rights in cases of CSA?

Follow up to Question three:

How would you describe these rights?

Does that change if the parent is the suspected perpetrator?

Question four: Is the credibility of a MHP affected by their role as a child advocate?

Question five: Are you familiar with Play Therapy as a modality for treating children?

Follow up to question five:

Is the credibility of a MHP affected by their use of Play Therapy?

At the close of the interview, I thanked the judge for his or her time, and asked the judge if there were any comments that he or she would like to make that were not covered by the questions asked. I also confirmed the process by which the judge could check my interview summary (see Appendix C for member check email).

Data Analysis

Michrina and Richards (1996) refer to the following process of analysis when undertaking a phenomenological approach to qualitative research. The first analysis compares

the ideal culture versus the culture as it exists. The ideal culture in this instance was defined by statute and the literature review. The real culture was that culture that became apparent in the interviews. The next level of analysis included any significant events that were common to the participants (Michrina & Richards, 1996). Presiding over cases of CSA was viewed as a shared experience, which was used as the basis of analyzing the phenomenon of the judicial perception of MHPs in CSA. My understanding of this phenomenon was increased by the view of the judges' experience as a shared event.

Analyzing the process of change as it occurs in this judicial culture was undertaken. The responsibilities of judgment can be unsettling. "A transformation that takes place over a length of time"(Michrina & Richards, 1996, p. 87) very likely occurs during the performance of this job. I was attuned to issues of process in my analysis. This was an important step because it helped me understand that there is an essential aspect of this phenomenon that is related to amount of experience, or possibly type of court the judge presides over, which helped develop some themes. It was also an assumption on my part that the more experienced judges are more open to MHPs, and this approach helped control for this assumption.

Analysis of the participant's emotions was included as well (Michrina & Richards, 1996). Emotions are not usually associated with courtrooms; however, one of the reasons that cases of CSA are so complex is due to the emotions unleashed by this unconscionable act. During the interview the interviewer paid close attention to nonverbal cues regarding emotion, being certain to verify any interpretations of same, while also closely attending to any statements regarding emotional reaction by the interviewee. Particular attention was paid to any indication of the judge's awareness of the emotional impact of CSA on both the child and family of the victim. Any metaphors used by the judges within the interview process were closely considered. These

were recorded by the researcher within the field notes immediately following the interview. Any themes that appear to be related to emotional reactions were specified as such within the developed constructs.

The data was coded using a bracketing approach as described for data analysis in phenomenology by Patton (2002). The data was reviewed as close to immediately following an interview as possible. As soon as any themes became evident, the data was coded in that manner, and the development of the subthemes and definitions of the themes followed. The field notes were analyzed to protect against researcher bias, but also to uncover reactions that might verify the themes uncovered. Memos were included in the reflective journal to maintain an ongoing record of the continual analysis.

IRB Protocol

The protocol established by the Institutional Review Board at The University of Mississippi was followed. The application was filed as soon after the prospectus was approved as possible. The Code of Federal Regulations, Title 45, Part 46, Section 46.101, b(3), exempts human subjects that are elected or appointed public officials (United States Department of Health & Human Services, 2009). The IRB policy at The University of Mississippi is broader, and covers all research that involves human subjects. The inclusion of public officials in the performance of their duties qualified as an exempt review. All application procedures were followed as per the protocol established by the University of Mississippi.

Chapter four contains descriptions of the issues and themes that developed. Chapter five discusses the findings.

Chapter Four

FINDINGS

Introduction

The purpose of this study was to increase knowledge of the judicial perception of Mental Health Professionals (MHPs) who testify in cases of child sexual abuse (CSA). The primary research question was: What is the perception of judges in Mississippi regarding the roles of MHPs in CSA cases? The findings of this phenomenological study are presented in this chapter. The findings include a summary of the population from which the participants were chosen, a summary of each participant, the process and results of the data analysis, along with the emergent themes.

Study Revisions

The original design included the use of one or two key informants as a method for verifying the adequacy of the interview questions. In beginning to undertake the study, there was difficulty in making contact with the judge to be used as a key informant. The other judges were contacted, and began to agree to participate. Interviews were scheduled so that the judges who had agreed to participate would not be inconvenienced. The initial interview indicated that the questions produced the data intended, and for this reason, no key informant was used.

As the study proceeded it became apparent that the use of CSA as a delimitation might not have been necessary. Even though the interviews were conducted with this delimitation expressly in mind, the participants did not disclose any particular difference toward cases of CSA. The judges viewed all court issues related to children equally.

Participant's Summary

Demographics

The study participants were recruited from the population of judges within Mississippi who have some jurisdictional relationship to cases that involve CSA. Of the five judges interviewed, none were currently involved in criminal matters regarding CSA. Although criminal cases are significant to the prosecution of those who sexually abuse children, those cases tend to focus more on the rights of the alleged perpetrator, and less on the child. In Mississippi, non-criminal courts that have jurisdictional issues with CSA would include Chancery judges, also called Chancellors, and County/Youth Court Judges. This led to a possible population of eighty County/Youth Court Judges and forty-nine Chancellors.

I obtained a list of judges that had been involved in MHP testimony in cases of CSA by asking other MHPs to suggest judges before whom they had testified. This process led to a list of twelve judges, of whom five agreed to be interviewed.

To maintain the confidentiality of my participants, the demographics of the judges are described separately from the description of the interviews. It is possible that the judges could be recognized if described in conjunction with their geographical locations and their demographic information. The pseudonyms used for each judge were chosen based on random observations I made during the interview.

The participants included two women, one Caucasian, and one African American, and three Caucasian males. The experience levels included one who was newly elected, one with seventeen years of experience, one with eight years of experience, one with five years of experience, and one with nine years of experience. I have reported the years of experience based on the year the judge was elected, as provided by the website of the Mississippi Secretary of

State. All of the judges had experience in the courtroom as attorneys who had also dealt with cases involving the alleged sexual abuse of children. The participants sometimes referred to their years of experience in this area, and often included time spent as a county prosecutor or as a practicing attorney. These differences will be noted during the interview summaries. The judges' previous experiences included extensive experience with family law, many years as a prosecuting attorney, mediation, and specially appointed Youth Court Referee.

The participants were offered the option of a member check in a researcher developed summary of the interview. Only one participant chose to take this option. The summary of this interview is included in Appendix D.

One interview took place in the Pine Belt region of the state. The town was small, with a population of 6600, but located in close proximity to a major city in Mississippi. Two judges were located in a larger town in North Central Mississippi, population 26,000. One judge was located in a small rural town in Southwest Mississippi, population 2000. One judge was located in a larger city, in Central Mississippi, population 26,000. There were three Chancellors and two County/Youth Court Judges. The newly elected judge was included as a participant based on the fact that the judge's previous experience focused on family law, and this judge had been very involved with the testimony of MHPs. The participant summaries will not include gender or race information as this would make them readily identifiable.

Individual Summaries

Judge Bush

The first participant was a chancellor, newly elected to the bench. Judge Bush was admitted to the Mississippi Bar in 1989. The judge's previous experience was extensively within

the family law area, with a great deal of interaction with MHPs. There were plaques on the office wall indicating honors achieved through the Mississippi Bar.

The judge displayed passion about the topic discussed. There was also a great deal of general knowledge about this issue that encompassed awareness of relevant incidents that had occurred throughout The State of Mississippi. The overall impression was of a professional who had managed to learn the ropes, while remaining open to new possibilities.

Judge Fom

Judge Fom did not initially respond to my request. Before I reached the point of a second request, however, I received an email apologizing for the delay in response, and a willingness to be interviewed. Judge Fom reports around five years of experience as a chancellor. The judge had very definite opinions about certain issues, and experience with custody issues created emotional responses in this interview.

The overall impression was that this judge had a desire to be as fair as possible, and worked to be aware of the perceptions of all parties before the court. This attitude creates openness to unique suggestions. There was one situation relayed during the interview that posited this creative approach to cases. This judge had experience in both mediation and research, which could arguably create such an attitude. The judge was admitted to the Mississippi Bar in 1974.

Judge Reed

Judge Reed is the Senior Chancellor for the same Chancery Court as Judge Fom. Judge Reed has seventeen years on the bench. The judge's previous experience was in private practice and also as a Special Youth Court Referee. Judge Reed was admitted to the Mississippi Bar in 1980. This judge has achieved recognition for philanthropic activities. The emotional response

in this interview revolved around MHPs who were biased, or who delivered the opinion of just one side.

Judge Reed appeared very private, without as much indication of family or personal interests found in the other offices. Chancellor Reed was highly active. Because Judge Reed had been called to an emergency hearing that morning, this judge was the only one who came directly from the courtroom, in full courtroom regalia, to the interview. The overall impression was that Judge Reed was quintessentially professional. The experience of having been on the bench since 1994 was evident. There was more of an awareness of the big picture, including some of the manipulations to which MHPs might be subjected by both attorneys and parents.

Judge Bruth

Judge Bruth was the first County/Youth Court Judge to be interviewed. The judge was admitted to the bar in 1973, and elected to the bench in 2002. Judge Bruth was very genial, calm, and gave the appearance of wisdom. This was even reflected in the office, as we did not sit at or around a desk or table, but in easy chairs. The informal environment was confirmed when once during the interview a local attorney came in before knocking, quickly apologized, and backed out. The judge's interview indicated an interest in making sure that the system worked as effectively as possible. This judge followed cases to their conclusion, mentioning situations that had come up in the area, including the final outcome, even when this occurred in another court.

The overall impression was that this judge was exceptionally evenly tempered. There was pride in the accomplishments of the jurisdiction. There was a general air of confidence that the system worked. The judge was, however, very aware of the difficulties presented by cases of CSA.

Judge Reeves

Judge Reeves was elected as a County/Youth Court Judge in 2003. The judge's previous experience was an extensive period as the county prosecutor, which led the judge to report twenty-two or so years of experience with CSA. The judge was admitted to the Mississippi Bar in 1977. This judge was very direct and to the point. The emotional responses here were not as evident. Judge Reeves' attitude was all business, occasionally giving one word answers to my questions. The all business approach was evident in the office as well. There were numerous chairs with few personal items in the office.

The overall impression was that this judge took the responsibilities of the position very seriously. There was also a great familiarity with MHPs and attorneys in the area. Judge Reeves indicated some situations in which the court's opinion had been changed due to new developments. This showed a willingness to continue to view evidence even after the case had been heard.

Interview Summaries

Judge Bush

The judge's office was still being organized, and there was a lot of activity in the office while I waited. The judge had been at another meeting in a neighboring town, and was a few minutes late for the interview. The waiting area in the office was very small, and this allowed me to interact with the court administrator and assistant who were present and organizing the office. It was clear that the entire office was excited about their new environment. There was much laughter, and the two workers were getting to know each other.

When the judge came in, the closeness of the office made it apparent that I was present, and Judge Bush immediately apologized, and led me into the office. The office was nicely

appointed, with many personal items, pictures, and honors that the judge had achieved. We sat at a conference table that was in the center of the room, in front of and perpendicular to the judge's desk. This office had the most room, and was clearly designed for work.

During this initial interview, it was apparent that the interview questions were leading to the data I was seeking. Judge Bush was very open. The general feel of the interview was that the issue of MHP involvement in cases of CSA was of concern to this judge, and there was an awareness of many of the issues that my questions were designed to uncover. Judge Bush's answers revealed a concern for considering resolutions to issues that were seen as potential problems, such as possible court appointment of MHPs to avoid bias. In this initial interview I was not yet aware that each participant would have a similar reaction. They often appeared confused as to the relevance of the questions regarding rights. As they formulated their answers, however, the potential issues began to take shape.

Judge Bush also exhibited some emotions when discussing these issues. There were times that the judge pounded on the table for emphasis, and times that the nonverbal communication was apparent. Judge Bush was very knowledgeable about statewide issues that had come to bear on my research focus, even mentioning a MHP who had been found to be unreliable by the Mississippi Board of Examiners for Licensed Professional Counselors, who revoked his license. Judge Bush also, as did each judge in turn, mentioned specific cases in which he or she had been involved. Metaphors were also used, such as "on the same page", and "put Humpty Dumpty back together again".

Judge Fom

This office was more settled, but the waiting area was just as small. At this interview, the courthouse was undergoing renovation, so there were lots of workmen, and construction noise,

until I entered the inner sanctum of the Chancery Court offices. I was a little early, and Judge Fom was willing to begin the interview. The office was comfortable, and inviting. There were family pictures. The office was not cluttered, and appeared orderly. I sat in a chair facing the judge's desk.

Judge Fom's general approach was amiable and open. The Chancellor got emotional at some points during the interview, and showed this by pounding on the desk. Judge Fom, as did the other interviewees, mentioned a particular case, but in this interview the mention was regarding the behavior of a particular MHP. This MHP had behaved in a particular manner that the judge thought was impressive. There was a period during the interview that we developed a better rapport.

I felt that this interview gave me the same information as Judge Bush. There appeared to be an awareness that judges should be able to rely on MHPs for assistance in these cases, but as we talked, the participant awareness of the complications that MHPs might face became more apparent.

Judge Reed

The Senior Chancellor's office was also neat. There were fewer personal items in this office, but the desk was a little more cluttered. The judge had been called to an emergency hearing, and appeared in robes. The judge appeared aggravated, which might have been due to the emergency hearing. I felt pressure not to keep the judge any longer than absolutely necessary. I also noticed in this interview, that I was feeling a pull toward the answers that I thought the judge might give. In order to curtail this, I worked to intentionally slow my responses. I also chose not to study the transcripts until after all the interviews so that I would

not be as aware of other interviewee responses during each interview. Judge Reed and I did eventually develop a rapport, and as the interview went on, the judge became more open.

The overall impression I had from this interview, was that this judge was the most skeptical of MHPs in the interviews to this point. At the same time, Judge Reed also perceived MHPs as useful to the court, especially when MHPs "talked to more than the child and the mother." This judge had the most pronounced reaction to the child's rights question, by responding "rights to what?" Judge Reed, as did Judge Bush, became less circumspect when the tape recorder was turned off, and we walked to the door.

Judge Bruth

This office was smaller and older, with no work of any kind underway. There was a metal detector at the door leading down the hallway, but it was unnecessary to walk through it, and it was unmanned. There was a large waiting room which I shared with another, who was the parent of a child before the court. During my wait we discussed the state of today's youth.

Judge Bruth was the first judge I interviewed who was not a Chancellor. Both the style of the responses and the offices themselves were different. The office was not undergoing any sort of physical change, but it was still more active. This office had the easiest access to the people it served, since the judge's office was immediately off the waiting room. There was an alternate entrance, directly across the hall from the courtroom.

Judge Bruth had a case scheduled for that morning, and thought that we might have to interrupt our interview for this reason, but the interview was finished before that was necessary. The overall impression from this interview was that Judge Bruth was very aware of MHPs and the benefit that could be gained from their testimony. The judge's answers revealed that the

limited access to MHPs sometimes led to complications because of the mixing of roles, an issue that my literature review revealed.

Judge Reeves

The final interview was also conducted with a County/Youth Court Judge. This office was similar in setup to Judge Bruth's, with a large and active waiting room. There was no remodeling occurring here either. The security here required that I be buzzed in by a receptionist. The judge's office was also much more in the regular flow of the courtroom.

On the day of the interview, court was in session, and the offices were teeming with activity. There were many people coming and going. I was allowed to wait in the "coffee room" and interacted there with some of the court staff. There was a nice energy, with most everyone interacting in a collegial way as they passed in the halls, or conferred in offices.

This judge was very short and to the point, initially answering at least two questions with the word “yes.” There was no need for much prodding, though, and the answers were expounded upon. The office was more professionally set up, with numerous wingback chairs in the room. I assumed these were there for potential conferences with families and their attorneys.

This judge had the most pronounced response to the question regarding MHPs credibility if they were child advocates. This was one of the questions that got an immediate "yes" reply. The more detailed answer named a specific organization. Judge Reeves also mentioned a MHP by name, and explained the process that this court used in relation to MHPs more operationally than in previous interviews.

Process of Analysis

To analyze the data for coding and establishing the themes, the transcripts were read several times. The initial reading was for the purpose of taking an epoche perspective, as

described by Patton (2002). I also took note of any metaphors used, indications of shared experiences, comments that reflected the ideal culture versus the real culture, any emotions exhibited by the participants, as well as any indication of "a transformation that takes place over a length of time"(Michrina & Richards, 1996, p. 87), which will be referred to as a CSA process effect. I felt this would help me read the transcripts without any prejudging, and help me note any bias on my part. I chose to define metaphor broadly and include commonly used colloquialisms. A list of these was created in my field journal. The second reading involved reading the entire transcript from beginning to end, working to establish the themes. I began to bracket statements and look for similarities within the transcripts. At the end of this reading I had developed a working list of themes, which was noted in my field journal.

The third reading was a reading to verify the themes I had noted. This reading involved cutting all the statements from the transcripts and grouping them together into meaningful clusters (Patton, 2002). The fourth reading involved separating the answer to each question and putting them together, reading the answers to each question from each participant at once. This was undertaken to both verify the presence of the themes originally noted, and to note the similarities in the answers. In a fifth reading, I read the collections of meaningful clusters both to verify my initial interpretations, and to solidify the themes and subthemes noted. A sixth reading was undertaken to separate the comments into subthemes through the use of highlighters.

The interview responses were consistent with the information discussed in the literature review. The awareness of the emotions present in the interviews as well as the process effect of “a transformation that takes place over time” (Michrina & Richards, 1996, p.87) resulting from experience with CSA, add depth to understanding to how MHPs should be involved with the courts. Comments that reflected a difference between the ideal culture and the culture as it exists

revolved around complexities in CSA cases that can lead to conflicts. All of the participants evidenced emotion around the issue of child abuse. This seemed to make them more determined to make decisions in the best interest of the child.

There did appear to be a difference in perception that changed over an amount of time, or a process effect, but it might be related to experience with CSA as opposed to being a judge. The participants were on a continuum, with Judge Fom at one end, and Judge Reeves at the other. Judge Fom has the least experience with CSA, and Judge Reeves the most. Judges Bush and Bruth were very similar, in the middle, and Judge Reed fell on the end closer to Judge Reeves. This effect was the most evident between Judges Bush and Fom. Judge Bush has the least experience as a judge, but extensive experience with CSA, while Judge Fom has more experience on the bench, but the least of all the participants with CSA. If the process effect had been a result of the years of experience on the bench, I would expect Judge Bush to be on one end, but in fact, Judge Bush's interview indicates a deeper awareness of the impact of allegations of CSA on the family and complications that arise in these cases. Judge Fom did not express as much emotion around CSA, and had fewer responses reflecting the complexities. This effect was also evidenced in that the three judges on one end of the continuum made even more comments regarding the impact that family involvement might have on a case. Their experiential perspective was also deeper. I had assumed that the more experienced judges might be more open to MHPs, but my findings did not bear that out. The most experienced judges appeared to also be the most leery about the credibility of MHPs. They also seemed to be the ones most able to specifically discuss what made an MHP more credible.

During the analysis of the data I was listening for metaphors. The first reading of the transcripts was for emotion, metaphor, ideal culture vs. real culture, and process effect. Using a

broad definition of metaphor, to include colloquialisms, there was not much of interest there. There were terms used, like "red herring", "using all the tools in the toolbox", and "hired gun", but nothing that was present for all participants. There was present an idea that MHPs had to be willing to fight the good fight. Judge Bush discussed being aware that MHPs felt "pulled and tugged" when called to court, but that it was "imperative" that MHPs be "willing" to testify. Judge Reeves talked about how important it was for MHP testimony when the evidence was not clear. Judge Fom mentioned that "it is too important not too" when discussing the need for MHPs to be open with the court.

Emerging themes

The depiction of the judicial perspective of the MHP role in cases of CSA is complex. The data indicates that judges are aware of the complexities that exist for MHPs who testify in court. At the same time, there is an unwavering belief that the task before the court is too important for MHPs not to give the court information needed to make the best decision for the child. The themes that emerged were the family, credibility, experiential perspective, and operational. The first two themes are focused on MHP behavior, while the last two focused on judicial experiences around CSA.

The family theme is defined as comments made by the participants that represent the judge's perception of the impact of allegations of CSA on members of the family. This includes comments about the mother, the father, the alleged perpetrator, and the alleged victim. The subthemes within this theme are the influence of the family over the child, issues unique to involving children in the judicial process, and the resulting trauma on the child and family from allegations of CSA. The influence of the family over the child subtheme is defined as comments referring to judicial awareness of possible ulterior motives that might exist within a family, such

as the possibility of parental coaching. The issues unique to involving children in the judicial process subtheme includes statements reflective of the manner in which children's involvement in court can lead to issues that the court must resolve, such as whether or not a child is capable of effectively testifying. The resulting trauma on the child and the family from allegations of CSA subtheme includes comments that the participants made that indicated awareness of the impact of such allegations on the family.

The credibility theme is defined as the participant comments that indicate the judicial need for MHPs to be trustworthy and believable throughout. The subthemes that developed within this theme include knowing the system, willingness to participate openly and candidly, and helping the child. The subtheme of knowing the system represents judicial comments regarding the participant's perception that MHPs need to familiarize themselves with the system in which they work. The willingness to participate openly and candidly subtheme is defined as comments that reflect that the participants want to be able to know that MHPs are sharing all information that could help the judge make decisions that are in the best interest of the child. The helping the child subtheme represents comments that reflect the participant's consistent focus on what was in the best interest of the child. The application of the best interest of the child doctrine was apparent throughout the interviews, but this subtheme represents the comments that most directly communicated the judicial application of the best interests of the child to cases of CSA that also involved MHP credibility.

The experiential perspective is defined as comments that the participants made in direct relation to specific judicial experiences regarding CSA. This includes the specific examples of the behaviors of MHPs with which each participant was familiar. There were no subthemes that developed within this theme because any attempt to further bracket the data diluted the impact of

the theme. The importance of leaving the comments in their full context became apparent in the analysis because the comments here directly describe how the participants perceived MHP behavior in court.

The operational theme is defined as comments made by the participants that helped define the rules of the court. The difference between the experiential perspective theme and the operational theme is subtle, but I think the distinction was important to make. The experiential perspective theme comments are directly related to personal experiences of the participants. The operational theme comments are more general in nature, and refer to rules of courts in general. One theme leads to specific data related to the judicial perception of MHPs in court, while the other leads to general data on how MHPs are expected to behave in cases of CSA. There were no subthemes that developed in the operational theme. The same dilution of the data occurred in the operational theme as it did in the experiential perspective theme, so the comments were left in full context.

The Family

This theme represents the comments made that describe the judicial perspective of the family when involved in cases of CSA. The subthemes are the influence of the family over the child, issues unique to involving children in the judicial process, and the resulting trauma on the child and the family from allegations of CSA. The judicial perspective of the role of MHPs in regard to this theme is for the MHP to assess the level of influence of the family on the child's allegation, to be open to possible ulterior motives on the part of one parent or the other, and work to minimize the impact of the trauma on the child.

The participants all were aware of the influence that families have over the children victims of CSA. Judge Reeves said "I've got most of my parents prohibited from seeing the

child pending the investigation. I don't want them offering to buy the child a four-wheeler, or send them to Disneyland…I don't want any coaching." Judge Bush referred to needing to know "to what degree the parents are playing in the allegations." Judge Reed said that in some cases "the mother so influences a child's testimony that it's a blur as to who's really testifying."

The participant comments also revealed a judicial awareness of issues that are unique to involving children in court. Participant awareness included knowledge that children at different ages had different issues. Judge Reeves stated

> because you take a child that is like seven and younger that starts giving a story. The story changes. And the story changes not because they are not telling the truth; it's just the mentality of a six or seven year old.

Judge Bush said that "for me to expect that child to just walk in and tell you, well that is oftentimes indicative of a child that has been coached by mom or dad." Judge Bruth stated that

> I mean very young victims - even with a forensic interview - in some cases you might get some information, but if they are required to come into court and actually testify - your chances of getting anybody under ten years old, unless they are extremely articulate or bright - to be able to properly testify is remote.

Judge Reed said "when you're looking at small children, I'm not sure that they - they can't communicate with you verbally."

One aspect that appeared in the comments made by the two youth court judges, Judges Reeves and Bruth, were comments that related to their awareness that older children might be manipulating the system. Judge Reeves said "I've found over the years, that you get the children, and they get up to about thirteen or fourteen, and they can be very manipulative, and say these things - that step daddy molested me - and it's absolutely a lie."

Judge Bruth put it this way

> …in some cases it's the child who has the problem, not caused by the parent or the other person. There are a number of circumstances that we've had where we've identified that the child is in fact, you know, having mental health issues and some of the things that he or she is alleging were not factually correct, for one reason or another - either because of mental health problems or because of personal feelings toward the person who is alleged to be a perpetrator.

Both Judge Bruth and Judge Reeves pointed out that because the Youth Court's primary concern is the child, that even in these cases the court would act to protect the child, sometimes sending the child to counseling or just continuing to monitor the situation.

The participants made comments that indicated an awareness of issues relating to the impact that allegations of CSA have on the child as well as the family. Judge Bruth said

> it's always better, I think, if you could, to try and keep the child in as normal a setting as possible, because they've been traumatized enough as it is, without sending them off somewhere where they don't know anybody.

Judge Reeves said "you know, it's a trauma on the mother." Judge Bush recognized that "we are asking in particular about the most difficult experience this child has ever had." Judge Fom commented that "any exposure to that (CSA) has a certain degree of harm," here referring to situations that included times when the allegation might have been planted in the child's head.

The assessment of the level of the impact of the traumatic allegation on the relationship between the mother and the alleged perpetrator was of interest to the two Youth Court judges. Judge Bruth said

> because you've got these situations - like the mother of the child and the male perpetrator still have such a close relationship - that you can't trust the mother, you know, with information as much as you'd like to. Then you have other situations where they completely cut the tie...

Judge Reeves took a more proactive stance.

> I want to know the mother's mental health with regards to whether she believes the child and supports her own child or whether she's sticking with the guy, and I have had a many a one in my courtroom say "I'm sticking with the guy."

The participants all put forth protecting the child as the focus. Toward this end, the comments indicated a judicial need for MHPs to be able to assess the level of influence the family has on the allegation. This was evident in the comments made indicating that MHPs need to be aware of potential ulterior motives the parents may have. Judge Bush said "I need somebody to join me that is on the side of the child and help me give some light into what is going on in that child's head." Judge Reed had an ongoing emphasis on being aware that in court cases either party might have motives for their behavior outside of MHP awareness, and that these should be included in our assessment. For this reason, throughout this interview there were such comments as "talk to everybody", and "talk to more than just the mother and the child."

Again the two Youth Court judges' comments were somewhat different. While their comments indicate an awareness of the possibility of ulterior motives, their focus is on the child to such an extent that the ulterior motives of others did not seem to have as much impact. Judge Reeves reported that "In Youth Court, it's a different animal," adding, "we're in the courtroom

and that's a confidential proceeding. So we just - it all gets out on the table. It all gets out on the table."

The participant's awareness of following the 'best interests of the child' standard was present in each theme. In the family theme, the comments were related to the need for MHPs to participate to minimize the trauma, and put the child in as nearly a whole position as possible. Judge Bush said "you as a clinician are treating that child because you want to help them overcome whatever they have been through" and "if there is a misunderstanding or something, and there appears to be good faith on both parents, a MHP can go a long way towards mending the damage." Judge Bruth's initial comment was that MHPs should be involved from beginning to end.

> First of all to identify the children who are abused, or work with the DHS, Department of Human Services, to identify those who are abused, and in some cases for example with the children advocacy type situations, to help prove the abuse, and then after that's all been done, of course, to give them counsel; care; to set up some sort of a treatment plan to try to help them overcome the results of the sexual abuse.

Credibility

The credibility theme represents comments that reflect the judicial need for MHPs to be trustworthy and believable. The participants indicated that from their perspective, possibly the most significant role for a MHP was to maintain credibility with "the mom, the dad, and the court." Judge Fom noted that this would be a "very difficult" task. The subthemes that developed within this theme include knowing the system, willingness to participate openly and candidly, and helping the child. I felt that the effectiveness of the interview questions was

apparent here, in that most of the comments were coded into this theme, although I am aware that this might also be due to researcher bias.

In the subtheme of knowing the system, the comments reflected that the participants felt that MHPs should understand how the system works in order to effectively participate. The comments are further divided into comments regarding the need for MHPs to be aware of their role, specifically fact v. expert witness, the participant suggestion of how MHPs should or should not handle court involvement, and comments regarding the judicial perception of MHPs who are also child advocates outside the courtroom.

Judge Bruth had the best overall statement to reflect the need for MHPs to understand the system. "I think they have to have an understanding of what the rules are, especially in dealing with the court, and things like that, you know, have to comply with their ethical standards." Judge Reed succinctly stated that "in court, your job is to testify as to - either you are an expert witness or you are a fact witness. To me, that's it." Judge Fom said "I am not sure it is clear on the ground between the person called in as to whether they are going to be a fact witness or whether they are going to be an expert." Continuing,

> I think if you are called as an expert then you gotta be the expert. If you are called as a fact witness, you can't be the expert, and you can't give - now, you know, the rules allow an opinion- but frankly, when you are an expert in that field I think that opinion should be excluded by the court unless you are qualified as an expert and there to give an expert opinion.

Judge Fom further described a situation in which a particular MHP had navigated this mine field effectively. The situation involved a request from a MHP who was testifying in a custody

hearing. The MHP had requested that the judge allow her to testify outside the hearing of the child, so that the therapeutic relationship might be protected.

> She wasn't put forth as an expert, and therefore she wasn't qualified as an expert by the lawyers. So she was a fact based witness, but she was very careful. I was very impressed with her professionalism. That she knew the difference in just being a friend of that student or a mentor of the student, or whatever it might be, like a teacher, and her role as a counselor.

Judge Reed offered another scenario to help clarify the role.

> It depends on what you are called for. If you are called just to give a diagnosis, then, that's your function, that's it. If you are called to give an expert opinion on whether or not, in your opinion, that the child has been sexually abused, you are again giving me an expert opinion, and that's based on your expertise - what you do for a living, how many cases like this you've handled. Stuff like that, that's what I want…you are being called to give an expert opinion, whether THIS CHILD, in your opinion, based on your experience, and your readings has been the victim of sexual; mental; whatever kind of abuse, and that's based on your treatment of the child, or your review of the records, sometimes, and stuff like that.

Judge Bush said

> we are looking for an MHP to be very credible in telling us what their opinion is - in what we can do to protect this child. You aren't being an advocate; you are being an expert to report what you've found.

Other comments reflected how MHP knowledge of the system helps the court. Judge Reeves said, when referring to testimony regarding specific techniques used,

that tends to be the problem of the person testifying. They don't tend to get it out there, you know? If they could medically explain what a picture of daddy sitting here with the little girl means. But they want to get to the conclusion without explaining their medical basis for getting there. They tend to say 'Oh, see? She drew a picture of a man and a little girl? That's - obviously she's been sexually abused.' Well, I can't make that quantum leap in evidence. So, it's not that they don't know what they are doing; it's just that they don't present it in a fashion that gives me something to hang my hat on.

Judge Reeves also had the following suggestion regarding MHP interviews of children. "It has to be under certain conditions that verify or give trustworthiness to the child's statements. It can't be coached testimony and they can't have an axe to grind." Judge Reed commented on the impact of possible MHP bias. "They have not talked to the other side - it looks biased when you are cross examined." Judge Reed went on to offer an example of a cross examination:

"Did you talk to my client?"

"No."

"Did you call my client?"

"No."

"What? You just relied on everything he or she said?"

"Yes."

Then commenting: "You know that's a problem. It's a red herring to you."

Judge Reed made the following suggestion to minimize bias.

Once you find out there is a court proceeding, and both sides have a lawyer, I don't know why you can't contact your client's lawyer and say 'I've been treating her, and I understand that y'all are gonna call me to give an expert opinion on something. I would

like to know - I would like to interview the other side. Could you arrange that through his lawyer?' and if he says no, then, you know, at least you've made an effort. You can at least say I attempted to do that. That's an option that sometimes MHPs should take, can I at least see if I can talk to the other side a bit.

Judge Fom's comments here were uncharacteristically closer in kind to Judges Reeves and Reed. In discussing the use of MHPs for procedural gain in a court hearing, Judge Fom said

> I think that is unfortunate. That abuses the MHP. But I think the MHP has to be alert to that, and to understand that they need to, if possible, to see; to interview both; to get all the information from both sides to make a valid judgment about what is in the child's best interest. So, I think the MHP would have to be very careful about taking at face value what one parent is saying.

Judge Fom also said

> again, that's difficult, because this person has approached you. This person is your client. This person is paying you to make a decision that's based on all the facts that may be not as zealous as that person wants, or may be lukewarm. In fact, in some cases I can't give an opinion that this person should get custody. I mean, that's possible too, but I think that's the responsibility of that person (MHP).

Judge Bruth's comments reflected awareness that knowing the system was influenced by the geographical location. "It depends on what the resources are that are available to you. In some cases you might have to refer out for treatment; you might end up eventually in an institutional setting away from this area." And later,

> I think that's one of the places where sometimes the rural setting is more of a handicap because of having fewer people to be able to assume those roles. We tend to want to fill the void and sometimes that's not possible because you end up with conflicts.

One area of particular interest to me, involved the judicial perception of MHPs who could also be considered child advocates. While it is expected that the opposing attorney will ardently challenge the objectivity of the MHP testifying, sometimes that challenge is based on that MHPs reputation as a person who advocates against child abuse. The comments indicate that the judges did not feel that MHP credibility was necessarily impacted by also being a child advocate, but that the MHP had to be careful to maintain credibility "throughout." The perception also evidences an awareness of the important role that MHPs can play in helping to combat the abuse of children in a broader more systemic way. Judge Fom highlighted the two extremes clearly.

> That's a field they've chosen. They are very passionate about it. I think that (public advocacy) could be an attribute, in a lot of cases. You just have to look at it case by case. Now, if it turned out to be a bizarre thing where they were out there on the edge, and I thought they had gone across lines, yeah, it could possibly not give them the credibility they would otherwise deserve, if I thought they were way out there. In some cases, it may be good that they thought seriously enough about their profession and what they were seeing to advocate publicly.

Judge Bush was on the same page.

> I really don't have a problem with people speaking publicly about it. I think it's important that MHPs who understand the problem can express to our legislature the importance of making laws that protect children. I am not saying that a MHP can't be an advocate. I am saying that in that courtroom your role is not an advocate.

Judge Bruth had a metaphor to share.

> I don't think you can find anybody who would advocate that abusing children were appropriate, so it's kinda like taking a very benign position. So if I am against people going out drunk driving and killing people on the highway, that doesn't mean I couldn't judge somebody who came in and did that. Because it's just natural that you can have normal opinions. I think in many cases, for example in a legal context, also in a mental health context, it is an appropriate function of a MHP to advocate the appropriate positions; for example, that we should establish agencies, or programs to help kids that have problems. And just because you want that doesn't mean that you could not necessarily be objective.

Judge Reed very succinctly stated in response to whether MHP credibility was affected by public advocacy,

> No it does not. It doesn't affect me at all. I think that's part of your job, to talk about a child's rights, I guess. For most people, you get in a relationship with a child, you're gonna go in and advocate for that child. I don't have a problem with that.

Judge Reeves was the only participant who took the opposite view. The response was just as succinctly in the other direction. "Yes. Yes. They get all wrapped up in it; emotional in it." A description followed of a particular organization that was always biased in favor of the child.

The second subtheme of the theme of maintaining credibility is willingness to be open and candid. This subtheme is defined as comments that reflect the judicial need to be privy to the information that MHPs have, and descriptions of appropriate MHP behaviors to meet that goal. There was a general impression that judges need to be able to rely on MHPs. An image of a complex relationship took shape, with the judges recognizing the importance of our

participation even though they accepted the possible dangers in relying too completely on a potentially biased MHP. At the same time, the comments showed recognition that MHPs often feel conflicted about being openly candid in court.

Judge Bush was the most reflective of this. "I think that the court must rely heavily on mental health experts in determining the sexual abuse of children." In discussing the need for MHPs to be willing,

> we have to have MHPs who will not run from it, but will embrace it so that we can protect that child. I can't control their mom and their dad, but I can try to get that child to somebody who can weed things out. I think it is imperative that we have folks that will embrace it. You simply have to have reliable people who are willing to embrace it and to see that they are not being used as a pawn in court, just to be pulled and tugged.

Judge Bush also said

> I am gonna rely heavily - these are such difficult decisions, and you want as much expert testimony as you can. And so it is imperative that we have good MHPs that… help the court, and make those decisions.

Judge Fom said "you've got to give the court adequate facts that the court needs to make a valid decision. It is too important not to," and "I feel like that in Mississippi particularly, Chancellors need the information in order to make a valid decision." Judge Reed: "…your role would be of course, to, I think, to advise the court of your findings…" Judge Reeves was more descriptive.

> A mental health person that comes into the courtroom, I expect a direct answer…I mean at some point, if you've got a child that says 'I've been sexually abused', and the adult denies it, and the child says it happened, you've got no evidence to back up either side.

> Then I've got to have a MHP that is willing to come into court and say within reasonable medical certainty, 'I believe the child' or 'I don't believe the child.'

And later he added

> If they believe a child has been molested, they need to open their mouth and say the child's been molested, and that's their opinion, and stick by it. Because that is what the judge is going to base it on.

The participants also made comments to indicate how they thought MHPs should, and should not, handle involvement in cases of CSA. Judge Reeves said "I get very aggravated when one of them will get in here and won't give me an opinion. That's exactly what they are supposed to be doing is giving me their opinion." Judge Reeves also realized, however, that in some situations that might not be possible.

> There are certainly times where a professional could get in there and say 'Judge, I don't know,' you see? I mean, 'You got four factors that say he did it, then you've got four or five that say I don't know if he did it.'

Judge Reed made a similar comment, from the other perspective of a case being so clear there was no need to interview the other side.

> You know, there are probably some cases that you don't need to - where the facts are so clear to you - 'I don't care what he says.' That's what you would tell the court. 'It wouldn't make any difference, Judge, I didn't need to talk to the other side, because a, b, c, and it's that clear, it's that clear to me.' That's fine too, you know.

Judge Reeves suggested that a MHP

> Get to the point. Give me a justifiable medical reason. All you gotta do is say 'Well, the study from Yale University where fifteen hundred children were examined, and so and

so, and the probability is so great that that picture indicates this,' in other words, they've backed it up with something other than just saying - just skipping to the end.

Judge Reed continued to point out the need to interview both sides.

My only problem is when they are called in to give an expert opinion on child custody, for any reason, you know, whatever reasons they give for calling them in, and the MHP has not talked to ALL the parties…what I like is for the counselor to have interviewed not only the mother and the child, but the person who is the alleged perpetrator.

Judge Bruth cautioned objectivity. "If it didn't happen, they need to be very careful not to let their personal feelings intervene with their ability to be objective as to what actually happened."

Judge Bush said

I trust that people in the MHP area are trained to do things in such a way that an answer is not planted in a child's mind. That we use different methods that they (children) are more open to discussing things with…so I certainly would respect that opinion of that MHP, that uses whatever means to encourage the child to relax; and to trust; and to encourage that child to be open with whatever is on their mind.

Judge Fom stated that

If I just had a MHP come in and give me the standard script one liners, without the use of any techniques, or as I said, tools, I might be suspect that they were as effective an advocate for the child, or as knowledgeable, thorough, or professional as they needed to be.

The final subtheme of the maintaining credibility theme is comments that reflected a need to keep the child in the forefront. This general idea was present in all the themes. Judge Fom in discussing "hired guns", who presumably do not have the best interests of the child at heart, said

"Integrity and professionalism needs to be placed in a place of more importance than just who is paying the tab, or what they want you to find." Judge Bush was the most passionate about this issue. "Number one, they (MHPs) can be the voice for the child…a child that has already been victimized and victimized does not need to go through the trauma." Judge Bush went further, stating

> I would say that MHP has got to be, in each case 'I am here to help the child, but how do I help the child? If the perpetrator is the parent, then obviously, I deal with the other parent, and deal with the court in protecting that child,' but it is a case by case basis. Parents need to be informed. If they are not part of the problem, then they are part of the solution. It's the MHP that needs to work with those parents…I said it was venomous, so it's important for MHPs who know what they are doing, and a court who has seen lots of different things, to reign everybody back in sometimes.

When discussing how to look out for the best interests of the child, Judge Bush added

> I need you to do some things to loosen that child up…because it strengthens the credibility of the story, where you are simply meeting that child where they are in life, as opposed to simply running in there and reporting to you.

Judge Bush also said "Certainly if you think a child has been abused, and the court is not responding, you ought to turn into an advocate. Somebody ought to be shaking folks and telling them 'Let's protect this child.'" Judge Reed stated that in order to protect children's rights, MHPs should just, "follow the law," by "if you are counseling a child and you come up with a belief that some child is being molested, you have an obligation under the statute to report that, and that's how you protect the child's rights, to me."

Experiential Perspective

The experiential perspective is significant because these are the comments that the participants made in direct relation to specific judicial experiences regarding CSA. The most predominant similarity in this theme was that four of the five participants mentioned a specific MHP. Usually these comments were positive. "She does a good job", or "she was smart to think of that" or "she is always a good witness". Negative comments tended to be around the concept of "hired gun" and bias that led to always believing the child in spite of the evidence. There was also a general notion that MHPs should possibly be appointed by the court. Four of the five participants referred to this directly. Judge Fom discussed this concept through discussion of the Guardian ad Litem (GAL), and Judge Bruth's interview suggested that in that jurisdiction the involvement of MHPs was understood to be court appointed.

Most of the comments made in relation to the question regarding the judicial awareness of Play Therapy as a modality for treating children were coded in either this theme or the operational theme. The reason for this was that most of the comments regarding Play Therapy were based on each participant's experience of Play Therapy in the courtroom.

The participant experience of MHPs in CSA, overall, was positive. It is interesting to note that their personal experiences with MHPs in the courtroom did impact their perception of MHPs, again, along a continuum from Judge Fom on one end to Judge Reeves on the other. I had originally thought that possibly the judges with the most experience with MHPs might be the most open to MHPs, but the comments were not in keeping with this idea. It appears that in reality, the judges with the most experience with MHPs in the courtroom were the most skeptical.

Judge Reeves was the most emphatic regarding potential MHP bias, followed by Judge Reed. Judge Bruth was the only participant who did not mention a specific MHP in a specific instance, but there was reference to specific types of organizations that participated in CSA, and Judge Bruth was the most aware of the importance of having different MHPs to fill different roles. Judge Bush was the most open to both positive and negative aspects of MHPs, mentioning a particular MHP whose credibility had been seriously brought into question. Judge Fom described an experience in which he had interacted with an MHP who had discussed with him the complications that might arise from her testimony in relation to her clinical relationship with the child in question.

While each participant in one way or another indicated some awareness of the complications and complexities that MHPs might face when testifying in cases of CSA, the overall attitude was one of focusing on the issue at hand. The participants were most interested in being able to rely on MHP testimony. They wanted to be able to know that MHPs were not biased. The participant comments indicate that MHPs testifying in court should remember that, as Judge Bush put it, "it is imperative that they (MHPs) realize that the court is not using that person for anything but to help that child."

Toward this end, there was a great emphasis on being certain that the MHP was not a "hired gun". Judge Bush stated that

> I was trained to be a lawyer. I was not trained to interview a child on whether or not - on a forensic interview. I want someone who is well qualified…there have been some folks in the past, (name removed), we used to rely heavily on…it turned out the work was not good; and so it is imperative that we have people who are willing to do this.

Judge Fom said

> when I was practicing it always seemed like there was always somebody that was a quote 'hired gun' and it didn't matter what the evidence showed, that person ALWAYS found for the person that was paying. And it was easy for me, on cross examination, to discredit them.

The experiential aspect of this came out in relation to the two most experienced judges more directly.

Judge Reeves said "the biggest falling out we've had up here has been, in the twenty something years I've been up here, are those ladies out of the (name removed)." He went on to state that "they are terribly biased in favor of the child. It does not lend to fairness in the courtroom to actually get to the bottom of it." Judge Reed said

> My only problem I have in cases is that I don't like hired guns in a sense, where one party is paying you…but you don't interview anybody but one side. That's my problem, because you get a distorted view.

Judge Bush urged caution.

> You have to be careful because when you cross lines - sometimes even though your motives may be pure - it sometimes looks like that you're overly zealous or something like that, so your credibility could be damaged. I have seen that happen on occasion.

The participants also made many comments based on their experience that indicated what they did want. Judge Fom: "I want the facts." Judge Fom felt that anyone who needed to share information with the court should feel free to do so, because if they did not, then that would "throw a road block into what I need to know." Also stating that "from my stand point as a judge, I want to know that adequate investigation has been done about not only what's going on, but the effect on the child." Judge Bush emphasized throughout that there was a need for MHPs

to be willing to participate fully. "We have to have MHPs who will not run from it, but will embrace it so that we can protect the child." Judge Bruth said "they need to be very careful not to let their personal feelings intervene with their ability to be objective as to what actually happened." Judge Reed said "sometimes I appoint the mental health examiner, because that way the person is perceived not to have a bias."

Judges Reed and Reeves were the most specific. In describing a particular MHP Judge Reed perceived as effective,

> she's a very good witness, no matter who calls her, because she would have already - she might not have talked to the defendant - but she would have talked to teachers and other people beside just the mother and the child. She would go a little further.

and "that's why I like to appoint." Judge Reeves mentioned several effective MHPs, all who were able to "get to the point." Judge Reeves wanted "the child interviewed in a setting that leads to truthfulness without coaching and come to a very, very concise opinion on what has happened, and the believability of the child." The judge made reference to a specific organization "that needs to be the first people to interview a small child that makes an allegation. They do it in such a context that there is no coaching and they make a determination based on those interviews." Judge Reeves' feeling was so strong that "it ought to be a law in this state" that this organization be the first to interview.

Operational

The operational theme is very close to the experiential perspective theme. It was coded separately because the participant comments in the operational theme are more specific to the courtroom environment in general as opposed to any particular participant experience. This

theme is rich in information to aid the MHP in developing their battle plan for involvement in cases of CSA.

This theme includes comments that reflect the judicial description of the system's concrete approach to CSA. The participants indicate that MHPs have no role in this area. The comments indicate that judges perceive this to be their role exclusively, and the comments indicate that judges resent anything that interferes with their being able to determine what is in the best interest of the child. Therefore, if the perception is that a MHP is working against the judge's determination of the child's best interest, the MHP credibility would be lost.

The participants indicate that they want independent testimony that can help them initially determine the accuracy of the allegation. After this, the court wants to use whatever means at its discretion to help the child. The participants indicated that the inclusion of a Guardian ad Litem (GAL) helped with this, as the GAL was an unbiased arm of the court. The participants also seemed to place the parent's interest as secondary to the interest of the child, and to recognize the need for mental health evidence to be "accepted in the field" before it could be admitted into evidence in court.

Judge Reeves said

> The court system has to know if the child is telling the truth and the event happened. And that's what we're there for. Then after that we have got a lot of alternatives. But first you gotta cross that threshold, did it happen?

and further,

> When you're looking at a case of sexual abuse the burden of proof is by preponderance of the evidence. I have to believe one side's testimony is more credible just by a hair than the other side. It's not like the criminal standard beyond a reasonable doubt, which is a

very strong burden. All I've gotta do is believe one side or the other. Whichever tips that little scale, just a little is the side that wins.

Judge Reed said

> There are certain things in the law that I can do. But there are certain things I can't do. If the party does not prove certain allegations, there is very little I can do. Because the burden of proof in the law is what it is. You know, so, for a mother who alleges that the father has sexually abused the daughter or the son, and there is no proof, there is very little I can do - you have to meet the burden of proof to prove your case - if you failed to prove your child was in danger, then I can't assume it is true, even though in my gut I say "oh yeah,: but I can't. I have to follow the law.

Judge Bruth said "did it happen or did it not happen. Somebody who did something wrong should be punished. Somebody who didn't should be helped." Continuing, "the ultimate question in many cases is not whether abusing children is good or bad, because I think that's pretty much decided, it's did this person do this, or was this child abuse." Judge Bush said "…that we are dealing with the facts and circumstances. That we are there together." Judge Fom said "we are here trying to seek the truth. So you know everything that might have a bearing on what the truth is, I think is important."

The participant comments that indicated a judicial resentment of anything perceived to be interfering with their responsibilities in relation to the children involved in CSA followed the continuum from Judge Reeves and Reed on one end, to Judge Fom on the other. Judges Reeves and Reed had the most notable reactions to perceived interference, and Judge Fom and Judge Bush the least. Judge Reed said "I happen to think that it's the judge's job to protect the child's rights," and "It's the court's job to protect the child," and "if there is a right that is violated, then

my job is to protect the child…I'm not sure what right they (children) have that needs to be protected by a MHP, to me." Judge Bruth said "I don't feel appropriate or competent to deal with most of the mental health issues, and I don't feel most MHPs would be appropriate to deal with my legal issues." Judge Fom said

> You can make the distinction, I guess, that the counselor is not an attorney, and therefore is not bound by attorney/client - so the question in my mind would be, do they have a duty to protect legal rights - again, that's kind of a blurred line.

Judge Bruth recognized the potential conflict that MHPs might have, stating

> We (judges) have to realize that you can have conflict of interest just as much as in the legal area. You can have conflict of interest in the mental health area, and sometimes the best advice to give to a perpetrator is far different than the best advice you can give to the mother who is not a perpetrator or to a victim, or even to the court.

When discussing the appointment of a GAL it becomes evident that the participants all relied on these court appointed professionals in cases of CSA. Judge Fom said "if there is any suggestion of abuse, the law requires that you appoint a GAL. And what I've done is appoint a GAL and ask them to conduct an investigation." Judge Fom described a GAL as "The question for GAL was whether or not they were the attorney for the child, or whether they were the investigator, or an arm of the court, to quote that phrase." Judge Bush was emphatic about the appointment of a GAL

> Anytime there are allegations of abuse or neglect the GAL - the law says a GAL SHALL be appointed. It is not optional; it is their (GAL) obligation to protect the rights of the child, and I think a MHP should see that GAL for what they are - strictly there to try and make sure the truth is told and that the child is protected.

Judge Reeves succinctly stated "the child's rights are being protected by a GAL. The GAL has a lawyer, because the GAL is a layperson, so I've appointed a lawyer for the GAL."

Throughout the data indicates that the participants always had "the child, the child, the child" at the forefront. When confronted with the possibility that sometimes the children's rights and the parent's rights might be in conflict, the comments made it clear that the participants would always come down on the side of the child. Judge Reeves said "if we find the child is manipulative and lying and all that, I'm still concentrating on the child. I want the child to go to mental health," and "I'm not worried about the parents." Judge Bruth said "my obligation - the court's obligation is to…make sure that those children are properly protected - their rights are to be protected, and it just depends on how you have to do that," and further, "I can only do that with taking into account the child's best interests and protection. If they (parents) can't protect the child, they're not gonna have the child." Judge Bush: "I would certainly draw on some of the case law that talks about the court being a super guardian, and that ultimately we are to protect that child." When directly addressing balancing the child's rights against the parent's rights, the judge indicated that the parent's rights would be secondary, saying "I think that we oftentimes make exception to that if it's not in the child's best interests." Judge Fom said

> I think the child's rights, just like the adult's, need to be protected - but I think it probably goes beyond that because the child doesn't have an advocate in the courtroom unless the child has a GAL - so I think the court has to look out for the rights of the child.

The participant interviews also indicated an awareness of the significance of MHP testimony that is accepted in the mental health field, in keeping with information gathered in the literature review. Judge Reed said

> If Play Therapy has been documented or accepted in your profession as adequate, reliable therapy, and that's what they present to me, then I am probably gonna let it in, because it has been accepted in the field. If it is accepted in the field of therapy, then I'm gonna give it the weight it's (sic) supposed to give.

Judge Bruth said "…that would be my only hesitation, is to make sure that whatever the technique - if the interview or therapy was not planting ideas - as far as facts - but simply trying to develop them." Judge Fom said "…if this is a tried and true technique, the lack of that might somehow effect whether or not I think they have done everything they should," and "I would think if it's an approved method, or it is a taught method, or it's a tried and true method, certainly, anything, any tools in the toolbox ought to be used."

Summary

The overall impression of the data indicates that the judicial perception of the role of MHPs in cases of CSA is complex. It is significant that the participants did all have the best interests of the child in mind throughout the interviews. The data is in keeping with the information gained from the literature review, and each participant interview gave the same basic information.

If I were to sum up the answers to my interview questions based on the participant answers, I would say that the judicial perspective of the role that MHPs should play in cases of CSA is that of investigator. The participants might recognize the potential conflict that MHPs can face in balancing the roles of clinician vs. witness, but feel that any balancing should favor the child first, and informing the court second.

The participants were in complete keeping with the literature review on the issue of child's rights, as they all pondered this question, with one participant stating "I don't know that I

have seen anything that says what a child's rights in a sexual abuse case is." The participants were all more able to list some parental rights, and it was only in the discussion of parental rights that the potential conflict with the child's rights began to become apparent.

The judges did not have much of an issue with the credibility of a MHP who could also be considered to be a child advocate, although they acknowledged that this might become an issue in some instances. Here again, the overall focus was what was going to be most helpful in determining what was in the best interest of the child. It would seem necessary for MHPs to protect their reputation vigorously, however.

The questions regarding Play Therapy were in keeping with the cases discussed in the literature review regarding the admissibility of scientific evidence. Overall the participants discussed that this was fully in the role of the MHP, with several pointing out that they did not have mental health expertise. Therefore, the judges reported that they rely on MHPs to help them determine what is or is not appropriate to be introduced as therapeutic evidence. The significance of these issues is discussed more fully in Chapter five.

Chapter Five

DISCUSSION

Introduction

The purpose of this qualitative study was to gain a deeper understanding of how judges perceive Mental Health Professionals (MHPs) involved in cases of child sexual abuse (CSA). The research focused on addressing the complexities that exist for MHPs in cases of CSA. These include balancing the roles that MHPs may have to play in CSA cases, the uncertainty around the definition of the child's rights, how the child's rights have to be balanced against the parent's rights, and how judges perceive MHP credibility. MHPs with CSA experience were asked to suggest judges before whom they had testified. Five judges in Mississippi were selected as participants, and each was interviewed face to face. There were three Chancery Judges, and two County/Youth Court Judges. The number of participants was small, but in keeping with a qualitative approach (Patton, 2002). The data was analyzed into themes. Chapter five will discuss how the data related to the literature review, and implications for policy, research, and practice.

Overview

This project began as the inkling of an idea in the back of my mind at a time when I found myself in the middle of a situation for which there seemed to be no solution. All of my training and knowledge told me what actions to take, but none of those actions were effective. I wanted to learn from the situation, and be able to develop a plan for how to act in cases of CSA such that the untenable situation that my clients were in could be avoided. The more I looked for

such an answer, however, the harder it was to find. No one, it seemed, had any more clarity than I did.

A qualitative approach to psychosocial research seems invaluable. There is so much about human nature and human behavior and the interaction of the two that cannot be quantified, try though we might. This phenomenon is squarely in that category. There are many scholars who have researched and studied CSA from many different angles. There are also legal scholars who have dissected and discussed the best ways to present CSA cases. Still, however, there remained an unidentified elephant in the room. I felt, as a practitioner, that the legal system was on one side of the room, the MHPs on the other with this elephantine divide in between. Even when this idea was just an inkling, I felt that if I could tackle that elephant; understand that elephant, I would be a more effective advocate for my clients who are victims of CSA. It was not always clear, however, what that elephant represented.

Eventually, though, it became clear that the one player on the battleground of CSA that remained somewhat of an unknown was the judge. In much the same way that silence and secrecy allows the abuse of children to continue, this unknown quantity of the judge seemed to be a hindrance to the effective development of a battle plan to advocate for the protection of a child victim of CSA. The silence and secrecy that is such a part of child abuse also creates, in my opinion, a duality that calls for qualitative research. Quantitative research might have led to data that confirmed already available information, but still would have left questions about the profundity of the judicial perceptions. It is that deeper, richer information that was unknown. The face to face discussion of these issues with judges who have had the experience of presiding over cases of CSA is the only way to put this into context; the only way to identify the elephant.

The study of the judicial perception of MHPs is a phenomenological study. The overall research question focused on how judges perceive MHPs in cases of CSA, with the purpose of clarifying this issue for MHPs. The transcripts indicated that there were four major themes, with six subthemes.

The participant demographics included three Caucasian men, one Caucasian woman, and one African American woman. Geographically, the participants ranged from North Mississippi to the Pine Hills in Southern Mississippi, with points in between. The experience of the judges was also varied. In years, their experience ranged from newly elected to seventeen years. The participants also had differing experiences prior to their years on the bench. All had practiced law, but some had been primarily in private practice, while others had been prosecuting attorneys. One had been a mediator, and one had worked extensively in the family law area as a practitioner. The amount of experience each participant had with CSA led to richer data, with more descriptions of preferred MHP behavior.

The overall impression from all the participant interviews was similar. The only factor that impacted the participant comments was the effect of the amount of experience the participants had with CSA. Michrina and Richards (1996) describe this as “a transformation that takes place over a length of time" (p. 87), which I have referred to, for the purposes of this study, as a CSA process effect. The significance of this lies in the awareness that working with CSA can lead to an alteration in perception. This seemingly intuitive fact may be worthy of future research, as the apparent CSA process effect does not appear to lead where one might expect.

Discussion of the Themes

The first theme, the family, had three subthemes, the influence of the family over the child, issues unique to involving children in the judicial process, and resulting trauma on the

child and the family from an allegation of CSA. The second theme is credibility, and it also has three subthemes which are: knowing the system, willingness to participate openly and candidly, and helping the child. Neither the third theme, experiential perspective, nor the fourth theme, operational, developed any subthemes.

The Family

The family theme is significant to the overall judicial perception of MHPs. The data indicated that judges were aware of the intricate complexities that CSA cases can create within a family. It also indicated that the judges need MHPs to be open and honest with them in order to make a valid decision regarding what is best for the child. As a MHP, this helps me because I feel more confident of my position on the CSA battleground, and also less hesitant to notify a judge directly if I feel that the system is somehow failing to respond.

The family theme is also in keeping with the literature review, especially the article regarding Dr. Smith and his forensic evaluation (Kuehnle, 1998). The purpose of that article was to highlight an ineffective forensic evaluation of a child in a case of CSA. The participants in this study all made comments in keeping with that article. Each participant in one way or another referred to bias on the part of MHPs. They all wanted to be able to rely on the fact that the MHP was objective, and not taking one side over the other, but accurately assessing the situation. The data also indicated that MHPs need to be aware of the possibility of ulterior motives on the part of the family, which was not specifically mentioned in the literature. Arguably, ulterior motives become clear if an assessment is appropriately done. It bears noting, however, that the experience of the participants in this study drove them to want to mention the need for MHPs to be aware of possible manipulation from parents specifically.

The subthemes are all equal, none having more significance than the other. The subtheme of influence of the family over the child is indicative of the judicial awareness of the need for MHPs to assess the truthfulness of the allegation. The literature review indicated much awareness of the possible mine fields here, such as suggestibility of interviews (Myklebust & Bjorklund, 2009; Rosenthal, 2002; Schreiber, 2000) and again, bias of MHPs (Kuehnle, 1998). The interview data was also in keeping here. The judges each mentioned suggestibility, and the effect of MHP bias was present throughout the interviews. The data added to this area, in that the participants with County/Youth Court experience had an interest in the possibly triangular relationship between the mother, the alleged victim and the alleged perpetrator, which was deeper than those mentioned by the judges without County/Youth Court experience, and an aspect of the phenomenon that did not show up in this literature review.

The subtheme of issues unique to involving children in the judicial process could have come directly from the literature review. The questions were not designed to elicit this information, but, the answers included issues that were also discussed in the literature regarding difficulties around the testimony of children (Connolly et al., 2009; MRE 803(25)). The judicial comments indicated an awareness of the trauma that testifying could cause a child, the awareness that children are not developmentally able to communicate effectively, as well as the issue of whether or not young children can appreciate the importance of telling the truth.

The last subtheme, resulting trauma on the child, indicates the judicial awareness of the severity of their responsibility. The judge's recognition of the child's suffering did give them pause. This is possibly another implication of the CSA process effect. One might expect the impact of continued exposure to this type of violence against children to have led to a different effect, in that the more exposure a judge had to the sexual abuse of children, the more inured to

its horror he or she might have become. The transferability of this study to this issue is not as strong as I might like, but still there is some indication in this data that the opposite is true, and the more experience the judges have with CSA, the more determined they become to protect child victims of CSA. At the same time, the judges with the most experience are also more aware of the significance of an accurate assessment. This is very hopeful. The assessment of CSA is a serious task. It should not be taken lightly, and knowing that judges rely on these assessments makes me more determined to perform them effectively. It also helps me feel more likely to approach the judge, especially in a County/Youth Court setting, as I no longer see the judge as some sort of adversarial elephant.

Credibility

The credibility theme is the meat of the analysis. This is the theme that most directly describes how judges perceive MHPs in cases of CSA, both in what they have seen, what they like from MHPs and what they don't like. The subthemes that developed in this theme are knowing the system, willingness to participate openly and candidly, and helping the child. The literature review sections on clinician roles and system expectations lend much credibility to the data in this theme.

In knowing the system, the participant answers indicated that they believed that in order to effectively participate in a case of CSA, the MHPs need to be aware of how the system works and who the players are. Guardians ad Litem (GALs) were a frequent mention here. GALs did appear in the literature, but not as prominently as they did in the data, which may be a reflection of limiting the participants to the State of Mississippi, where the appointment of a GAL is mandatory in cases of child abuse. The literature referred to the need for MHPs to be competent in their involvement in court (Kuehnle, 1998), and the importance of the MHP being fully aware

of the particular role they were to play in each case (Schreiber, 2000). The participants each made reference to fact versus expert witness, using much the same language as found in the articles. This study adds to the knowledge in that the legal system does not seem to be as aware of the difference between a therapeutic assessment and a forensic evaluation as they probably need to be in order to effectively judge the reliability of MHP assessments.

The subtheme of willingness to participate openly and candidly was unexpected. I knew that MHPs were often hesitant to participate in court cases, but as I've described, I attributed this to the elephant in the room. I was not cognizant that judges were as aware of this as their responses indicated. The data indicates that this is a primary concern for judges in cases of CSA, which also alleviates some of my uncertainly around testifying. The literature did not address this issue directly. There was much discussion of what to include in testimony (Grove & Barden, 1999; Piper, 2008; Murrie et al., 2009), what the rules are (Grove & Barden, 1999), how to decide what type of witness you are (Ceci & Hembrooke, 2002; Piper, 2008; Steinhauser, 2002), and some mention of the significance to the child (Snow et al., 2004), but nothing I saw that so clearly spoke to the need for MHP courage. This clarifies for me the reason to go into battle; the reason to be willing to embrace this challenge. As one participant put it, "It's too important not to."

Helping the child is another subtheme of the credibility theme. It was very gratifying to see that each of these participants kept their focus on what was in the child's best interest throughout. This idea was present to such an extent that any pause on the part of the participant resolved itself by a return to what was in the child's best interest. The participant comments indicated that they would also appreciate being able to view MHPs as on the same team. Perhaps they perceived us in a slightly elephantine way as well. They wanted unbiased, non-suggestive

information about what had happened to the child, and what would minimize the impact of the trauma for the child.

Experiential Perspective

The experiential perspective theme represents judicial comments regarding specific cases that the participants chose to mention. This theme is significant because it represents the similar experiences that the judges had, which helps to tease out the data most helpful for MHPs in cases of CSA. There were no subthemes within this theme, mainly because the comments were all reflective of personal experience, and breaking the comments down lessened the impact of the data. These comments were strengthened by maintaining them within the context as a whole. The main similarity is that four of the five participants mentioned specific MHPs by name. The fifth participant mentioned organizations with which the jurisdiction was familiar, but did not mention anyone by name. Again, the participants wanted to be certain that the MHP was not biased, and that the evidence offered was reliable.

The experiential perspective theme indicates that the participants were, to some degree, aware of the complications that can exist for MHPs in this area, but continued to focus on the child and the importance of making a valid decision for that child's best interest. The literature discussed the importance of effective assessments (Dent & Newton, 1994; Kuehnle, 1998), and that is in keeping with what this data indicates. The negative comments made by the participants were all in relation to bias, or "hired guns" and the examples of negative experiences revolved around what were described as ineffective assessments. The positive comments all were reflective of effective assessments, in which a thorough investigation was done, to include either the alleged perpetrator, or at least one outside third party. The participants also made it clear

that when it came to balancing the child's rights against those of the parent, that the child's rights would take precedence, particularly in County/Youth Court.

The significance of this theme lies in the clear battle plan that it reveals. MHPs involved in cases of CSA should be thorough and objective. All the literature regarding effective assessments of CSA was in keeping with what the participants reported they wanted from MHP testimony. This helps me, as a MHP in CSA cases, in that I will not feel hesitant to contact other attorneys, GALs, or others in a position to help me get an accurate picture of the child's situation. This theme is also significant in that it highlights the fact that the participant awareness of the differences between forensic evaluations and therapeutic assessments is not as keen as we might like.

Operational

The operational theme is significant to the judicial perception of MHPs in cases of CSA, because it outlines the parameters that exist within the system and teaches us the rules of the game. There were no subthemes within this theme either, for the reason that the data lost its significance when broken down. The appointment of GALs was the major similarity here. The literature discussed the importance of the rules of evidence as they applied to the admission of therapeutic evidence (Grove & Barden, 1999; Murrie et al., 2009), as did the participants of this study, who discussed the importance of the need for the techniques to be non-suggestive and accepted within the field.

One unexpected response was that the more experienced participants seemed to have a proprietary feeling regarding their role in relation to the child. The participants expressed resentment in relation to anything that was perceived as interfering with their ability to make a clear decision about what is in the best interests of the child. This is very significant.

Participation in CSA cases can often feel like such a contentious experience, but this response highlights the need for MHPs to cultivate working relationships with the actors in this system. It also makes it clear that MHPs need to remember that the judge is also on the side of the child, because the data makes it clear that they see themselves as the "super guardian" of the children before their courts.

Participant comments that reflected the need for MHP evidence to meet the standards outlined by the literature were prevalent (Crawford v. Washington, 2004; Grove & Barden, 1999; Murrie, et al., 2009). The evidence should be admitted it if it were "approved;" "taught;" "tried and true;" "documented as adequate, reliable therapy;" "accepted in the field;" "not suggestive;" helpful in leading to a "justifiable medical opinion;" or if it "works." The MHP was encouraged to "use all the tools in the tool chest;" "use everything within their power." These comments indicate that the real world of this phenomenon matches the ideal world as it is described in the literature.

Implications

The implications of this research are numerous. There are policy implications that could direct MHP involvement in courtrooms at a systemic level, research implications that could add more understanding to the interaction of judges, MHPs and CSA, and practice implications that could help individual MHPs in their decision making regarding involvement with CSA cases, both in and out of court. The participant population was small, but the comments reached saturation, which lends credibility to the study. Trustworthiness is established through the consistency with the literature, disclosure of all researcher bias, consultation with an external auditor, option of a member check, and disclosure of all outlying data. The participants were

varied enough to be reflective of the population, with a mix of genders, races, geographical locations, and court jurisdictions.

One notable aspect was the time of interviews. Each interview was between eighteen and twenty-two minutes. The brevity of the interviews could be seen as a weakness. I believe it to be an indication of the effectiveness of the interview questions, in conjunction with the population interviewed. Patton (2002) discusses the qualitative researcher's need to decide between breadth or depth, saying

> the extent to which a research or evaluation study is broad or narrow depends on purpose, the resources available, the time available, and the interests of those involved. In brief, these are not choices between good and bad, but choices among alternatives, all of which have merit." (p. 228)

In this study, the purpose was singularly focused on the judicial perception of MHPs in court. There was some thought given to the need not to inconvenience the participants any more than necessary. The questions elicited the data I was seeking, and therefore the answers were efficiently communicated. The population of judges are accustomed to succinct communication as well, and therefore, refrained from including extraneous information in their responses. The fact that they were able to complete the interviews in such a similar amount of time can lend credibility to the interview questions.

Policy Implications

The policy implications of this research indicate a need for a platform for MHPs to communicate with the legal system. There are also implications that help to define the role that MHPs should play in the public advocacy for a more streamlined approach to CSA cases, the need for educating the legal system more directly on the differences between forensic

evaluations and therapeutic assessments, to push for court appointments, and for MHPs to cease communication with parents once courts become involved.

There is awareness on the part of MHPs, in my experience, that it is preferable to be appointed by a court in cases of CSA. Each of my participants made reference to this same idea, and yet it is not policy. When both MHPs and judges are aware that court appointment is preferred, why would this not be policy? A regular policy of appointing MHPs would help eliminate so many of the issues for both MHPs and the judges in this study. The bias that the judges mentioned so frequently, the confusion on the part of MHPs as to what role they are to fill, both of these major issues would be eradicated by the regular court appointment of MHPs in cases of CSA.

There is also the emerging issue that the judges in this study are not fully aware of the difference between a therapeutic assessment and a forensic evaluation. This is another area in which a communication platform between MHPs and the legal system could increase the effectiveness of MHP involvement in court. The literature directed at MHPs makes it clear that it is an ethical responsibility of MHPs to know and understand what a forensic evaluation is, and be trained to administer these before we endeavor to do so. The participant comments underscore that they are not MHPs, and that they rely on us to give them reliable information. The assessment of whether a child has or has not been sexually abused is inherently complicated, as the literature shows. The implications of the results of a therapeutic assessment versus a forensic evaluation, are, therefore, very significant. For this reason it is imperative that the legal system understand the difference more clearly.

This is exactly in keeping with the participant comments related to the question of advocacy. Here is where MHPs need to be more publicly direct, and as Nelson (1998) said,

speak openly. To ascertain that the judicial system understands the difference between a forensic evaluation and a therapeutic assessment could lead to the development of a policy in which the court appoints a GAL (Judge Bush emphasized that this should already be happening in Mississippi), who then seeks out and retains a forensic evaluation of the child. This could eliminate much confusion. MHPs that treat and see the child could then be free to testify as fact witnesses, but would not be required to harm the therapeutic relationship by having to change roles and become more investigator than therapist. The results of this study indicate that all of the judges in this study would be open to this idea, and that some even think that this is what already happens. The only thing missing is the awareness of the subtle differences between a thorough forensic evaluation as opposed to a therapeutic assessment.

Another policy implication is to specify that once a court is involved in a case of CSA, the MHP would no longer communicate with the parents of the child, but would instead communicate with the court, possibly through a GAL. The data indicated that this potential issue creates a question for judges regarding the objectivity of MHPs. Adopting a policy such as this would decrease the appearance of possible bias, and increase the ability of the MHP to remain objective. Anything less than a systematic adoption of this policy, however, would be less effective than each individual MHP's adoption of the same policy. This is another way in which MHPs could advocate for our clients by suggesting this as policy.

One participant often referred to needing to be on the same page. I thought this participant felt the same way as I did, namely that both MHPs and judges were in the same room, but on the opposite side of some great divide. The public advocacy and leadership aspect of the counseling profession could serve as the platform on which we cross this divide, and go, once

more, into the breach together. There can be little doubt that this would be a more effective approach for the children victims of CSA.

Implications for Practice

At the outset of this study, I wanted the outcome to include increased clarity for MHPs who participate in cases of CSA in court. I hope that the results of this study can help MHPs feel less insecure about participating on behalf of their child clients who have been victims of any type of abuse. The overall attitude indicates how important our involvement is. The participants indicate that MHPs need to be more aware of the legal system, and how to use it to our best advantage. The overall attitude was very much in keeping with the analogy of a battlefield. The need for MHPs to be, as one participant put it, "willing to embrace" this role; to be willing to suit up and enter the fray boldly is clear.

The complexities created on this battlefield, however, are significant. For this reason, I would suggest, based on the results of this study that MHPs undertake the following actions when involved in any case that might end up in court.

First, I think that all MHPs have to develop a courtroom action plan as part of their philosophy of practice. This should include a determination of what type of witness a MHP is willing to be, as well as what type of witness a MHP is qualified to be. This would include whether they are willing to participate as a fact witness, an expert witness, a forensic evaluator, or any combination of these. It would also include the MHP's determination of how they will balance all these possible roles. For one example, if the MHP role in a particular case is to be a forensic evaluator they might specify that they will not participate in a therapeutic manner. The literature indicates the importance of this, the judicial comments underscore this, but the need to intentionally outline this on an individual MHP basis has not been implemented fully in practice.

It is as if some of us avoid this, and determine to address it on a case by case basis. This is not effective. So often our cases take shape only after we have become involved. It is too late at that point to objectively make the determination as to how you will address court involvement. It is becoming more common for MHPs to include information about how court involvement will be handled within the client's informed consent, but I would suggest that this go further, and MHPs be encouraged to philosophically determine the parameters of their willingness to be involved in court as an operational matter. There are many aspects of court involvement that MHPs cannot control. A court subpoena cannot be ignored. Still, MHPs can control what type of witness they are willing to be, but in order to do this, there first needs to be an understanding by the MHP of the different types of witnesses. I think often MHPs who are not planning to be involved in court do not take this seriously, but again, our profession is such that we cannot predict with perfect accuracy when or where we might be called to court.

The next step would be, and often already is, the inclusion of how court involvement will impact the therapeutic relationship within the informed consent to the client. This will increase the clarity of the relationship for all parties. It can also serve as a tool to uncover potential ulterior motives on the part of the parent. Judicial comments indicated that this was a concern, and the judges were not confident that MHPs were aware of the possibility that parents might try to manipulate us. If MHPs fully articulate the limits of their policy regarding court involvement, the plan of a parent secretly coaching a child might be thwarted before it has even been implemented. A MHP who states clearly that they are only willing to be involved in a therapeutic manner, clearly stating that they are not qualified as a forensic evaluator, might end the relationship with a referral, as opposed to spending months in the confusing morass of a case.

This too, is better for the child. A parent who "shops" for a therapist is creating an evidentiary trail that will speak for itself.

I also would suggest that MHPs include in their informed consent that once there is court involvement, the MHP will no longer communicate with the parents without court order. One of the issues that judges most often have is concern over bias on the part of the MHP in favor of one parent or the other. In Mississippi, the requirement of the appointment of a GAL for the child creates an opportunity for the MHP to avoid the mine field of battling parents, by using the GAL as an unbiased representative for the child. This is in fact, one of the roles a GAL is often called on to perform. The data also indicated that the judges in this study would completely understand and be in support of MHPs talking more directly to the court.

After the MHP has developed their philosophy of courtroom approach, and included the operation of this within their informed consent, they can then take the next step in an effective courtroom plan. If the MHP has determined that he or she will only participate in court as a fact witness, then the plan is complete. If not, if the MHP is courageously willing to embrace involvement in court, the MHP should begin to gain knowledge about their system. This includes what jurisdictions handle what types of cases, what rules of evidence apply, and primarily, who the system participants are. The judicial comments in this data indicate that all of these are important things for MHPs to know. Knowing the system can go so far in helping to alleviate the confusion MHPs feel when called to court. The time it takes to familiarize yourself with both the rules of your particular court, as well as the people who run it, can be invaluable in your being able to use the system to the best advantage of your client. The data indicated that, even though each judge wanted objective facts, awareness of the judge's personal idiosyncrasies could be helpful in determining how to best present these facts. This is not surprising, as

attorneys utilize their knowledge of judges to develop their cases, and even my mother reported using the same technique in her case presentations for the Mississippi Department of Human Services (MDHS). MHPs need to get on this page, which requires that we intentionally involve ourselves in this system. This can also help in advocacy for our clients, in that we become a known entity, no longer an outsider to this well-defined system. Assuming effectiveness on the part of the MHP, being willing to actively contact the GAL, DHS, the judge, or whomever your knowledge indicates as the most effective party, can go a long way toward case resolution, possibly without court involvement.

MHPs need to make use of the players within their own battlefield. Being actively involved by contacting attorneys, GALs, teachers, judges, DHS workers, is one area in which the judges wished we were more active. I don't think the importance of this can be overstated. Being actively involved with this system can help on so many levels. It can lead to the system's increased use of court appointment, can increase the system's awareness of the importance of forensic evaluations, can help clarify the MHP role, can indicate that the MHP needs to educate about that role, and can generally increase the clarity around what is actually happening with the child. The silence surrounding abuse is often referred to as a reason for its continuation. The compartmentalization of information around a case of CSA has much the same impact. Removing those barriers between those on the CSA battle field can increase our effectiveness in individual cases.

The final suggestion I would make for MHPs willing to embrace court involvement, is actually one that should be throughout. MHPs must know the role they are to play, and be prepared to maintain that role. One aspect of this data was that judges want MHPs to be investigators, which is not a role we typically play, except as forensic evaluators. MHPs need to

be intentionally aware of this, such that we are not tempted to cross the line. Both the data and the literature indicate that MHP crossing of lines in cases of CSA leads to problems. Educating judges on the differences between forensic evaluations and therapeutic assessments might serve to alleviate this issue.

Another aspect of knowing our role is to remember to let the judge be the judge. A possible occupational hazard for MHPs is the constant analysis of, well, everything. This can sometimes lead to paralysis in action because of assumptions that have been made regarding possible outcomes. MHPs need to allow the judge to do his or her job, and this means open candidness. This might include educating the judge on the different roles we play, especially forensic evaluation versus therapeutic assessment. The MHP also needs to keep in mind that judges perceive themselves as "super guardians" for children, and will resent any attempt at our trying to usurp that responsibility.

An issue in this same vein that came out of this data was one of trust. It felt to me, as I talked to the judges, that they wanted to trust us, but were not sure they could. At the same time, as a MHP, I was on the other side, wanting to trust them, but not sure that I could. I now think that I can trust the judge to be the judge. I also see that effective involvement in court indicates that I must. Hesitating to be open and candid about the information I have regarding a case is akin to using silence to allow abuse to continue. This is of course, the heart of the fear we feel as MHPs, because of the great risk to our clients, our reputation, our licensure and our way of life. But surely, it is also, at least in part, the reason we do what we do. Protecting clients, especially children, is certainly part of why I do what I do. I want to be a courageous MHP, bloodied, perhaps, but valiantly fighting to protect children from the great devastation of abuse.

Implications for Research

The implications for further research include: the possibility of increasing the awareness of the emotional reaction of judges and how this impacts the outcome of CSA cases; a more thorough evaluation of the CSA process effect implicated by this research; and a continued exploration of the strange reaction to the issue of children's rights in conjunction with society's reaction to child abuse. There is also possible research regarding the differences in attitude between the Chancellors and the County/Youth Court Judges, as well as the attitude of resentment that the judges may have in relation to anyone perceived as keeping them from doing what was in the best interests of the child.

Having a deeper understanding of the impact of judicial emotions on CSA cases could serve as a microcosm of current societal attitudes toward CSA. The emotions present in the participant responses to this interview were interesting, but not the goal of this research. In fact, the questions were designed to minimize any emotional response. The emotions were still present, however, and I think it would be of great import to understand how the experience of being a judge presiding over cases of CSA impacted the fulfillment of that duty. The more experienced judges in this study had more pronounced responses, and did seem to have issues related to specific experiences borne of their own courtrooms.

This is very close to the process effect, as described by Michrina and Richards (1996). I think the subtle but important difference is that the CSA process effect would include the possible impact of becoming numb to CSA, as well as how the continued utilization of the system itself impacts the process of justice. This might be significant not only for MHPs working in the legal system, but for the legal system as well. The furtherance of justice, a lofty

ideal, is limited by human frailty. Understanding how this phenomenon impacts the justice system could conceivably lead to more objectivity.

Another area for possible future research is to continue research in the societal reaction to the issue of children's rights, and how this interacts with society's attitude toward sexual abuse. I had expected, when I started the literature review on children's rights that there would be a clear description of these rights. As the literature review points out, however, it was anything but. I also expected that judges who were accustomed to dealing with children's issues in court would have an understanding of children's rights. This was also not true. The literature discusses the development of children's rights (Fetzer & Houlgate, 1997; Mason, 2005), and how this interacts with society's view of children (Simon, 2000), and how both of these interact with society's approach to child abuse (Dodds, 2006). This issue does seem to exist for the judges in this study as well. Research to deepen the understanding of how this directs the manner in which we work to eradicate child abuse might reveal new avenues for advocacy.

The differences in attitude between the Chancellors and the County/Youth Court Judges are also a possible area for future research. Understanding the precursors for this difference could be useful. There are many possible reasons for the difference, including that County/Youth Court Judges have more discretion, and the cases in their courts are confidential. As one participant put it, "In Youth Court, it's a different animal." This could allow for more effective outcomes in CSA cases, but the possible interaction between the greater discretion and the CSA process effect might lead to potential bias on the part of the judge. The difference in attitude between the judges in this study who had been County/Youth Court Judges and those that had not could be an indicator of a potential issue.

The most experienced judges in this study had an interesting reaction regarding anything perceived as interfering with their duty toward the child. This is comforting for a MHP who works with children, and interesting from a research perspective. What creates that bond? Is this a paternal type reaction, or a source of professional pride? Does it only exist, as it did in this study, for the judges with County/Youth Court experience, or possibly only in relation to children who have been abused? This could be a reflection of the effectiveness of the County/Youth Court system in Mississippi, in that the purpose of these courts is to protect children. This reaction indicates that the judges, in cases of CSA, should be seen as the general, as it were, on the battlefield. Understanding this phenomenon would be of great interest.

Conclusion

As previously mentioned, the beginning of this project was just an inkling of an idea that there was an elephant in the room with those of us involved in cases of CSA, and the need to expose that elephant in order to be more effective soldiers in the battle to protect children. The outcome is that the knowledge that we assumed we knew about how judges perceived MHPs is clearer. The data indicates that the judicial perception of MHPs involved in cases of CSA is much as we might expect. The depth added through the interviews indicates that there is much to be gained by a more intentional connection between the legal community and the community of MHPs, especially when it comes to the issue of sexual abuse.

For the continued purpose of full disclosure of the researcher lens, I hope that the data in this study will be utilized by other MHPs. I believe that it can, in that the vague unnamed fear that I felt regarding involvement in court has dissipated. In the mental health community, we often are aware of the need for disclosure and open communication, and how these things lead to the resolution of problems and more effective involvement in life. It is also often a lack of trust

borne of experience that inhibits disclosure and open communication. It is interesting to me that these are the very issues that comprise my elephant. The experiences of both judges who preside over cases of CSA, and MHPs who have been involved in courtrooms leads to a general lack of trust that impedes us both. Knowledge of the boundaries, rules and requirements of this well-defined system can go a long way toward alleviating this fear, and reestablishing trust between judges and MHPs. Perhaps, one day, there will be MHPs among us who will consider themselves accursed that they were not beside us on this battlefield. I hope that the knowledge gained through this study will lead to MHPs being more willing to boldly entry the fray. Again, it is too important for anything less.

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APPENDIX A

RECRUITING EMAIL

Judge _____,

My name is Lynn Etheridge, and I am a doctoral student in the Leadership and Counselor Education department at The University of Mississippi, working on my dissertation.

My project is a qualitative one, with the stated purpose of exploring and describing the requirements that judges in Mississippi perceive regarding the introduction of mental health evidence in cases of child sexual abuse. To work toward this purpose, I would like to interview you, in an open-ended confidential interview, which might take 30 minutes of your time. The collected data will then be analyzed to help mental health professionals better prepare for testimony in court cases involving child sexual abuse.

My project has been approved by The Institutional Review Board at The University of Mississippi. The IRB has determined that this study fulfills the human research subject protections obligations required by state and federal law and University policies. If you have any questions, concerns, or reports regarding your rights as a participant of research, please contact the IRB at (662) 915-7482.

Dr. Marilyn Snow at The University of Mississippi is the Faculty member overseeing my project.

If you would be willing to be interviewed, or have any questions, please reply to this email, or call me at, and I will schedule you for an interview or answer any questions you have.

Thank you very much for your assistance in this matter,
S. Lynn Etheridge, JD, MSCP, LPC, RPT-S

APPENDIX B

CONSENT FORM

CONSENT FORM

Consent to Participate in an Experimental Study

Title: The role of Mental Health Professionals in cases of child sexual abuse as seen through the eyes of judges

Investigator
S. Lynn Etheridge, JD, LPC, RPT.
Department of Leadership and Counselor Education
117 Guyton Hall
The University of Mississippi

Sponsor
Marilyn S. Snow, PhD.
Department of Leadership and Counselor Education
108 Guyton Hall
The University of Mississippi
(662) 915-1363

Description

We want to how judges perceive the roles that mental health professionals perform in cases of child sexual abuse. In order to answer our question, we are asking you to take part in a short interview with the primary investigator. The questions are open ended, and you will be allowed to make any comments that you would like. The interview will likely only last for 30 minutes.

Risks and Benefits

There is no risk involved in this study except for your valuable time. There is no direct benefit to you, however, the results of this study may help mental health professionals to more effectively participate in cases of child sexual abuse.

Cost and Payments

The interview will take approximately 30 minutes, and you will be given an opportunity to review the interviewer's summary of the interview at a later time, which might take 15 minutes. There are no other costs for helping with this study.

Confidentiality

The interviews will be taped and transcribed, but there will be no association of your name or any other identifying information with the transcript of the interview. Therefore, we do not believe that you can be identified from any participation in this study.

Right to Withdraw

You do not have to take part in this study. If you start the study and decide that you do not want to finish, all you have to do is to tell S. Lynn Etheridge or Dr. Marilyn Snow in person, by letter, or by telephone at the Department of Leadership and Counselor Education, 117 Guyton Hall, Hall, The University of Mississippi, University MS 38677, or 662-915-7069. Whether or not you choose to participate or to withdraw will not affect your standing with the Department of Leadership and Counselor Education, or with the University, and it will not cause you to lose any

benefits to which you are entitled. Inducements, if any, will be prorated based on [the amount of time you spent in the study.]

The researchers may terminate your participation in the study without regard to your consent and for any reason, such as protecting your safety and protecting the integrity of the research data. If the researcher terminates your participation, any inducements to participate will be prorated based on the amount of time you spent in the study.

IRB Approval
This study has been reviewed by The University of Mississippi's Institutional Review Board (IRB). The IRB has determined that this study fulfills the human research subject protections obligations required by state and federal law and University policies. If you have any questions, concerns, or reports regarding your rights as a participant of research, please contact the IRB at (662) 915-7482.

Statement of Consent
I have read the above information. I have been given a copy of this form. I have had an opportunity to ask questions, and I have received answers. I consent to participate in the study.

Signature of Participant	Date
Signature of Investigator	Date

APPENDIX C

MEMBER CHECK EMAIL

Judge _____,

As a reminder, we had an interview in ____regarding your perception of mental health professional testimony in court cases regarding child sexual abuse.

I am beginning the analysis part of my research, and wanted to offer you the opportunity to review a summary of our interview. It is not necessary, but if you would like to review a summary let me know, and I will forward a summary of our interview to you.

I want to thank you again for taking the time to allow me to interview you. I am excited about beginning this next phase of the project, and your willingness to participate helped make that possible, so thank you.

S. Lynn Etheridge, JD, MSCP, LPC, RPT-S

APPENDIX D

MEMBER CHECK SUMMARY

Summary of interview

This participant indicated that the role of a mental health professional in court was to adequately investigate and assess the level of harm, if any to the child. The judge specified the differences between fact and expert witnesses, and mentioned a particular mental health professional's conduct relating to a court proceeding that was particularly effective. There was also mention of the necessity of balancing confidentiality against the necessity to give the court the information needed to make a valid decision. It was also important that the mental health professional be aware of their role, and to maintain that role, as to fact or expert witness.

The judge mentioned that it was preferable to have someone who did not feel overly cautious about reporting information to the court, and this was one reason, in addition to legal requirements, that a Guardian ad Litem might be appointed. The Guardian ad Litem was also described as someone who also might assist in advocating for the child's rights. The participant felt that custody issues sometimes led to situations in which a child's privacy interests might be violated, and the judge described procedures followed to mitigate this.

The judge stated that it was important for the mental health professional to interview all parties, and to get all sides. The judge mentioned the natural parent presumption. The judge stated that a suspected perpetrator/parent's rights might not change, but that being a suspected perpetrator would certainly have an impact on a case. The judge's approach to parental rights was that everyone was on a level playing field to begin, and that if it seemed that a parent might be moving toward self-incrimination, the judge would take steps either to protect the parent's fifth amendment rights, or, when necessary, the child. The judge took the approach that each case should be decided on its own merits, while keeping the best interests of the child in the forefront.

The judge reported that it was important for mental health professionals to maintain their professionalism and integrity, and that their credibility would not necessarily be impacted if they publicly advocated for children, or against child abuse. The judge stated that public advocacy might even be an attribute.

The judge did not think that the use of Play Therapy would lessen the credibility of a mental health professional, as long as it was a "tried and true" method. This also should be decided on a case by case basis.

VITA

S. Lynn Etheridge, JD, PhD, LPC, RPT-S

EDUCATION

The University of Mississippi
Working towards a PhD in Counselor Education 2011
Dissertation: The role of mental health professionals in cases of child sexual abuse as seen through the eyes of judges
Honors: Doctoral Student of the Year 2010

Mississippi College
Master of Science in Counseling Psychology Counseling Psychology 2001
Graduated Magna Cum Laude

The University of Mississippi Law School
Juris Doctorate 1990

The University of Mississippi
Bachelor of Arts in Political Science and Psychology 1987

CREDENTIALS

Member of The Mississippi Bar, Inactive
Licensed Professional Counselor in The State of Mississippi since 2003
Board Qualified Supervisor in The State of Mississippi
Registered Play Therapist Supervisor since 2010

HONORS

Doctoral Student of the Year, The University of Mississippi Counseling Ed. Department 2010
Member Phi Kappa Phi 2010

TEACHING EXPERIENCE

The University of Mississippi
Served as a teaching assistant to professors, and collaborated on curriculum and exam development, developed and delivered some lectures, utilized online platforms Blackboard and Angel,

graded papers, led groups, and collaboratively assessed student ability in videotaped counseling sessions 2008 - 2010

Teaching assistant to Dr. Marilyn Snow in “Play Therapy”, “Advanced Play Therapy”, and “DSM IV”
Teaching assistant to Dr. Kevin Stoltz in “Theories”, “Child and Adolescent Development”, and “Skills”
Teaching Assistant to Dr. Sue Mossing in “EDHE 202”

PRESENTATIONS

Association for Play Therapy
Served on a panel with other professionals to address how Play Therapists should handle involvement with the legal system.

Mississippi Licensed Professional Counselors Association
Teacher for first session on Introduction to Supervision, offered as a part of a four track series That can lead to becoming a Board Qualified Supervisor in The State of Mississippi 2010

Mississippi Counselors Association

2006 -2010

Licensure 101

Presentation concerning the requirements for gaining licensure in The State of Mississippi

Counselors in the Courtroom 2009-2010

Co-presented with Dr. Marilyn Snow, concerning how counselors should participate when testifying in court

Ethics Learning Institute 2010

Co-presented with other professionals, an hour focused on the ethics regarding duty to inform third parties

Mississippi Association for Play Therapy

A presentation on the "Best Practices" Policies of the Association for Play Therapy at the annual conference, March 2010

PUBLICATIONS AND PAPERS

"The practitioner as researcher: Qualitative case studies in play therapy"
Co-authored with Dr. Marilyn Snow, Dr. Lori Wolff, and Dr. Franc Hudspeth
Published in The International Journal of Play Therapy 2009

MEMBERSHIPS

American Mental Health Counselors Association
Attended AMHCA leadership in 2010,2008,2006
Accepted award for the Mississippi Licensed Professional Counselors Association as State Chapter of the Year, 2010

Association for Play Therapy
Attended and served on panel at annual conference, 2010
Obtained credential of Registered Play Therapist – Supervisor, 2010

Mississippi Counselors Association
Serve on Executive Board
Attended MCA Leadership for 2005, 2006, 2007, 2008, 2009, 2010, 2011
Served as Entertainment Chair for Annual Conference 2006

Mississippi Licensed Professional Counselors Association
Served as Secretary on the Board, 2004 - 2006
Served as President Elect Elect on the Board 2006 - 2008
Served as President Elect on the Board 2008 - 2010
Serve as President on the Board 2010 – 2011

Mississippi Association for Play Therapy
Ethics presentation at annual meeting, 2010
Serve as President-Elect 2010-2011